

United States
Court of Appeals
for the Ninth Circuit

FREDERICK I. RICHMAN, Appellant,
vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

LYDA TIDWELL, Appellant,
vs.

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Transcript of Record

In Three Volumes

VOLUME I.

(Pages 1 to 316, inclusive.)

Appeals from the United States District Court for the Southern District of California, Central Division

FILED

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No. 14702

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Certificate of Clerk to Transcript of Record	
on	198
Notice of (Frederick I. Richman)	196
Notice of (Lyda Tidwell)	197
Statement of Points on (Defendants and Appellants)	969
Statement of Points on (Plaintiff and Appellant)	972
Bond of Receiver	25
Certificate of Clerk to Transcript of Record ..	198
Consent to Petition to Renovate Apartments, etc.	40
Decision, Memorandum of	3
Dismissal with Prejudice	124
First and Final Report of Receiver and Petition for Allowance of Fees to Receiver	75
Schedule A—Inventory of All Known Assets and Properties, etc.	93
Schedule B—Receipts and Disbursements, Dec. 1, 1953-Feb. 28, 1954	104-107

Schedule B—(Continued)	
I—Disbursements for Expenses and Obligations Incurred by F. I. Richman Prior to Receivership	108-109
II—Disbursements for December, 1953, Operation, Maintenance and Renovation	110-112
III—Disbursements for January, 1954.	113-114
IV—Disbursements for February, 1954	115-116
Schedule C—Disbursements Made by the Receiver Covering Liabilities Incurred Prior to Feb. 28, 1954, etc.....	117-119
Schedule D—List of all known Creditors as of March 10, 1954	120-121
Judgment for Revocation and Avoidance of Trust, and Appointment of Receiver.....	41
Memorandum of Decision	3
Memorandum of Points and Authorities of Plaintiff Tidwell re Pre-Trial Hearing on Distribution of Funds, etc.....	171
Memorandum to Counsel re Disposition of Funds and Allowance of Fees.....	182
Memorandum to Counsel re Fee of Attorney for Receiver	189
Minutes of the Court:	
Nov. 30, 1953—Fixing Bond and Order for Appointment of Receiver	21
Dec. 2, 1953—Hearing Continued.....	30
Dec. 4, 1953—Order Denying Motion to Vacate Order Appointing Receiver, etc.....	32

Minutes of the Court—(Continued)	
April 12, 1954—Hearing on Report of Receiver, Petition for Allowance of Fee to Receiver and Receiver's Attorney.....	157
June 21, 1954—Pre-Trial Hearing re Division of Moneys Held by Receiver.....	181
Names and Addresses of Attorneys.....	1
Notice of Appeal, Frederick I. Richman.....	196
Notice of Appeal, Lyda Tidwell.....	197
Notice of Application and Motion for Permanent Receiver	47
Exhibit A—List of All Known Creditors, etc.	48
Notice of Hearing on First and Final Report of Receiver on Petition for Allowance of Fees to Receiver and to Receiver's Attorney	123
Objections and Answer to Report and Petitions of Receiver and His Attorney for Fees.....	125
Exhibit A—Letter dated Feb. 19, 1954, Joseph T. Enright to Martin, Hahn & Camusi	139
Letter dated Feb. 25, 1954—Martin, Hahn & Camusi to Frederick I. Richman.....	143
Objections of Plaintiff Tidwell to First and Final Report of Receiver	145
Order Appointing Receiver	21
Order Authorizing Receiver to Employ Counsel	29
Order Authorizing Receiver to Pay Christmas Bonuses	35
Order of Court dated Feb. 26, 1954.....	55

Order Extending Time for Receiver to File Report, and Petition for Instructions.....	44
Affidavit of John Whyte	45
Order in re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver	190
Petition for Allowance of Fees to Attorneys for Receiver	58
Supplemental	164
Petition for Authority to Employ Counsel....	27
Affidavit of John Whyte.....	28
Petition for Authority to Pay Christmas Bonuses	33
Petition for Authority to Renovate Apartments, etc.	36
Petition to Disqualify, and Authorities.....	158
Points and Authorities in Support of Plaintiff's Objections, and Reply to Defendant Richman's Objections	154
Reply of Plaintiff to Objections of Frederick I. Richman	152
Statement of Points on Appeal, Defendants and Appellants (USCA)	969
Statement of Points on Appeal, Plaintiff and Appellant (USCA)	972
Statement of Reasons and Points and Authorities in Support of Application and Motion for Permanent Receiver	51

Stipulation between Lyda Tidwell and Frederick I. Richman, 2/26/54	54
Supplemental Petition for Allowance of Fees to Attorneys for Receiver	164
Transcript of Proceedings:	
November 30, 1953.....	202
December 1, 1953	216
Transcript of Proceedings, Jan. 15, 1954.....	218
Witness:	
Hallberg, Roy E.	
—direct	223
—cross	230
Transcript of Proceedings, April 12, 1954....	235
Transcript of Proceedings and Testimony, May 12, 13, 14, 17-June 7, 8, 1954.....	246-754
Exhibits for Defendants:	
B—Photostat of Diary Kept by Roy E. Hallberg	393-404
E—Letter dated Jan. 22, 1954, Roy E. Hallberg to Air Pollution Control, Inc. Attn. Mr. B. Manalis	646
H—Fiduciary Income Tax Return for Richman Trust Jan. 1, 1953-Jan. 1, 1954..	675-679
Exhibits for Receiver:	
1—Cash and Western Arms Report, Oct. 30, 1953-Nov. 30, 1953	573-576

Transcript of Proceedings, May-June, '54—(Contd)

Exhibits for Receiver—(Continued)

2—Cash and Western Arms Report, Nov. 30, 1953-Dec. 31, 1953	581-584
3—Cash and Western Arms Report, Jan. 1, 1954-Jan. 31, 1954	588-591
4—Notice of Violation of Sec. 24242 of the Health and Safety Code dated Jan. 13, 1954	711

Witnesses:

Byrum, Louis B.

—direct	341
—cross	359

Fussell, Paul

—direct	614
—cross	620
—redirect	629

Hallberg, Catherine Cosgrove

—direct	515
—cross	526

Hallberg, Roy E.

—direct	254, 267, 297
—cross	325, 362, 417, 439
—redirect	461
—recalled, direct	732
—cross	743
—redirect	752
—recross	754

Transcript of Proceedings, May-June, '54—(Contd)

Witnesses—(Continued)

Hallberg, Roy E. (Deposition)

—direct	871
—cross	910
—redirect	913

Kennedy, Maude

—direct	469
—cross	476
—redirect	493, 594
—recross	502, 571

Laugharn, Hubert F.

—direct	559
—cross	567
—redirect	568

Lipphardt, Edna

—direct	503
—cross	510
—redirect	514

Manalis, Barney

—direct	701
—cross	704
—redirect	709

Mann, Jefferson A.

—direct	298
—voir dire	310
—cross	317
—redirect	324

Transcript of Proceedings, May-June, '54—(Contd)

Witnesses—(Continued)

Richman, Frederick I.

—direct (Under 43b)	528
—direct (Defts.) 597, 630, 635, 671, 697	
—voir dire	666, 695
—cross	713
—redirect	723
—recross	729

Whyte, John

—direct	541
—cross	550, 569

Whyte, John (Deposition)

—direct	922
---------------	-----

Transcript of Proceedings, June 18, 1954..... 755

Arguments, Mr. Whyte	756, 776
Mr. Enright	764

Transcript of Proceedings, June 21, 1954..... 782

Exhibits for Defendants:

A—Copy of Mutual Release, Lyda Tidwell to Frederick I. Richman, et al.....	796
---	-----

B—Dismissal with Prejudice dated March 25, 1954	124-125
Admitted in Evidence	797

C—Stipulation dated Feb. 26, 1954.....	54-55
Admitted in Evidence	798

D—Order dated Feb. 26, 1954.....	55-57
Admitted in Evidence	798

Transcript of Proceedings, June 21, '54—(Contd.)

Exhibits for Defendants—(Continued)

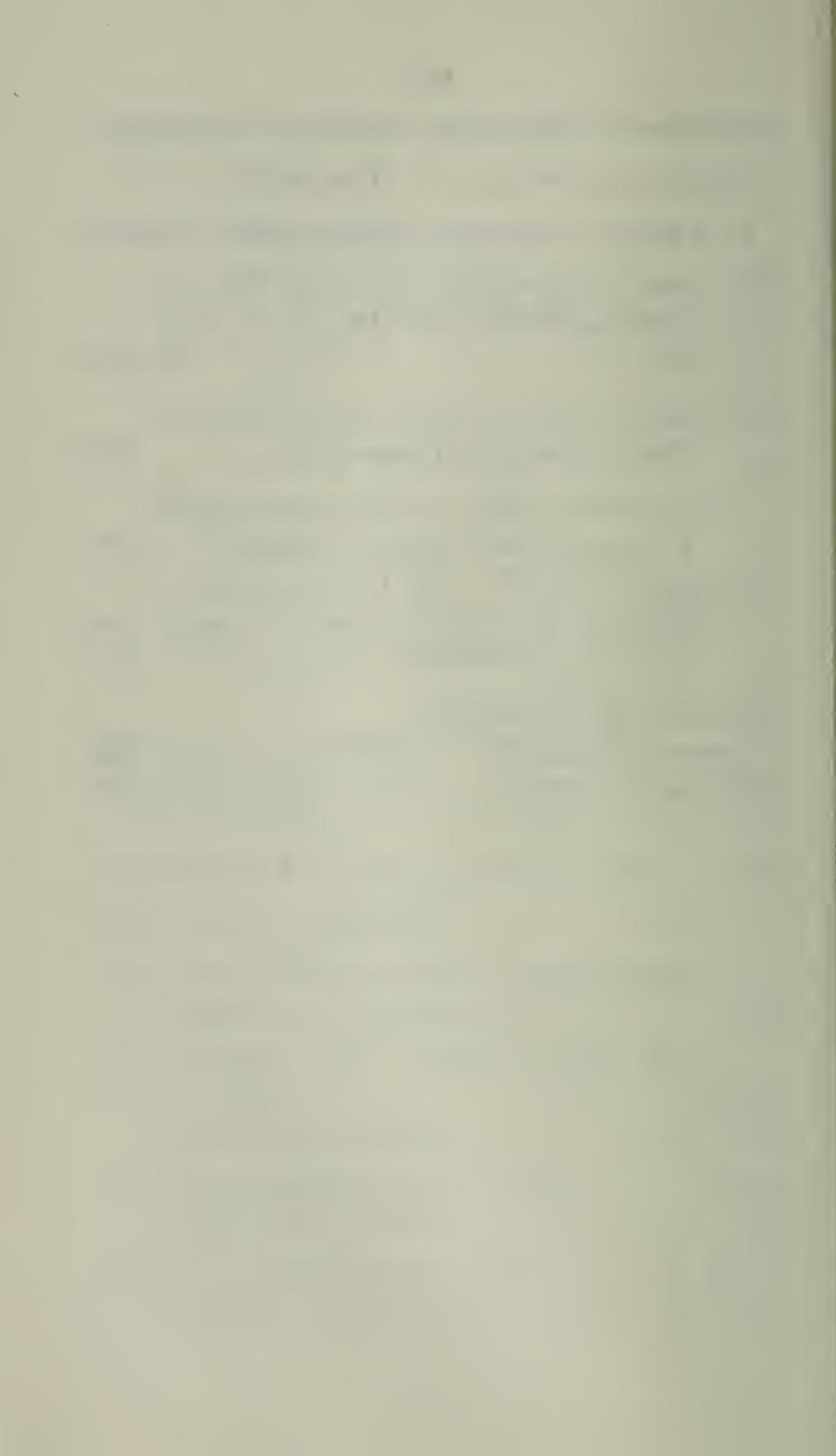
E—Escrow Instructions, Feb. 26, 1954... 799-800

F—Letter Contract dated Oct. 22, 1953, Air
Pollution Control to Mr. F. I. Rich-
man 801-803G—Smog Control Permits for the Oliver
Cromwell and the Canterbury..... 805H—Letter dated Feb. 19, 1954, Martin, Hahn
& Camusi from Joseph T. Enright..... 139
Letter dated Feb. 25, 1954, Frederick I.
Richman from Martin, Hahn & Camusi. 143
Admitted in Evidence 807

Transcript of Proceedings:

September 27, 1954 817

October 12, 1954 843



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* Page numbers appearing at foot of page of original Transcript of Record.

In the United States District Court for the Southern District of California, Central Division

No. 13,742-T.

LYDA TIDWELL, et al., Plaintiffs,
vs.
FREDERICK I. RICHMAN, et al., Defendants.

MEMORANDUM OF DECISION

This is an action between Lyda Tidwell and Frederick I. Richman each of whom is a trustee and trustor under a Declaration of Trust. Plaintiff has brought suit asking this Court to permit her to void the Declaration of Trust and for a distribution of the assets of the estate to the trustors. She claims that the Trust is a voidable one because of (1) undue influence in the inception; (2) fraud in the inception; (3) fraudulent and improper management; and (4) that after the establishment of the Trust it has been fraudulently and wrongfully managed by the defendant to such an extent that he should be removed as agent of the trustees and the Trust should be terminated.

At a pretrial conference the Court ordered a trial [2] upon the single issue of whether there was undue influence or fraud or both which moved plaintiff to execute the Declaration of Trust. It was held by the Court that if plaintiff prevail on this issue, there need not be a trial as to the later issue except as it might become involved in distribution of the estate to the persons entitled thereto and in an

accounting which would necessarily be involved. Plaintiff has objected to this procedure on the basis that a showing of certain acts of mismanagement (which she claims she is able to show) will relate back to the things which were done before she executed the Trust Declaration, and will show that certain privileges of management which defendant has under the Trust Declaration were in fact set up as they are in order to enable him to do the supposedly high-handed and improper acts of which she accuses him. The Order of the Court relating to the separation of issues for trial is a provisional one. It provides for a trial upon the issue of voidability of the Trust because of undue influence and fraud in the inception. Evidence of how the Trust has been managed since it has been created has been specifically excluded from the trial of the issue regarding undue influence and fraud in the inception. The Court has ruled that if plaintiff prevail upon the theory thus being tried, the only need to go into acts of management will be in the accounting. The ruling was that if plaintiff cannot establish her cause of action upon the theory of wrong in the beginning, the Court will still hold open its findings in that regard so that if any evidence received in the course of trying the issue of post execution management and alleged fraud be relevant to what has been termed the First Issue, the Court would not have foreclosed itself from consideration thereof in [3] making its findings. This has brought the case to trial in a posture where potentially plaintiff might make out her case on trial of the First

Issue and establish a right to voiding the Declaration of Trust and distribution of the assets with an accounting. If the evidence be insufficient for that purpose, she still would have a right, under the terms of the Order severing issues for trial, to continue to try fraud in the inception during the trial of the issue of mismanagement and fraud on the part of the agent after the Trust was executed. Trial of the First Issue has occupied in excess of 19 days of testimony and argument. It therefore readily appears that trial of the other referred to issues would also be extensive and that it has been provident to sever the issues in order to conserve trial time with its attendant expense to the litigants. It now appears that plaintiff has made out her case on her theory of undue influence in the inception of the arrangement, and the only reason for setting forth the limitations immediately above described is to explain to any reviewing court that this case has been tried upon a limitation as described.

The creation of the Trust arises out of many circumstances which include the fact that Mrs. Tidwell and Mr. Richman were the immediate descendants of parents who left considerable wealth.

Early in the occurrence of circumstances which led to execution of the Declaration of Trust, Lyda Tidwell was known as Lyda Blythe Richman Nagel. She was at that time the wife of one Nagel whom she thereafter divorced. She later married Albert Ray Tidwell, with her brother's grumbling acceptance of the union. The brother has always consid-

ered him one of the host of fortune hunters whom he [4] continually feared as threats to the inheritance. She is a woman well educated in Liberal Arts, having been graduated from well respected schools, and holds some academic degrees indicating advanced education. Her education has been predominantly in language and literature. Following graduation from the last of the schools which she attended, she was employed for a time by the State of California in one of the Relief Agencies which existed during the depression years. Her position was that of Case Worker and at one time she was a Supervisor of Case Workers. Apparently she did well in that employment. She has taught school in one of the South American countries where she instructed children of resident American Nationals. Since her return she has delivered public lectures on her observations and experiences in travel.

Although making no claim to being a woman of great physical beauty, Mrs. Tidwell is none-the-less a person of considerable personal charm and attraction. It would be expected that if she were without estate, she would still be appealing as a prospect for matrimony. This is important here because of defendant's long term insistence that it is not true. Defendant Frederick I. Richman is her only sibling. He is older, much more aggressive, and a successful member of the California State Bar. His very considerable learning and ability in the Law and handling of property brought him to a position where his parents had considerable trust in him as an advisor concerning their own affairs, and they

manifested a great deal of pride in the ability and progress of their son. Throughout her youth, Mrs. Tidwell (first as Lyda Blythe Richman and later as Lyda Blythe Richman Nagel) held a young sister's considerable admiration for the very real and proudly recognized [5] accomplishment and senior standing in the family of her Stanford-trained lawyer brother. She thought of herself as educated in the gentle arts and of defendant as a wise, technically trained master of practical estate problems. He was actually a man of somewhat testy and domineering disposition, inclined to be critical of his younger sister's habits and friends. While she looked up to him, he looked down upon her. The parents, who were in declining years (the father having already suffered a stroke and being under some disability) had need to rely for some guidance in legal and property affairs, and often looked in part to their accomplished son for that guidance. Mrs. Tidwell often accompanied her father and brother on errands to a rental property. She sometimes even collected some rents but never became, nor was trained to become, a manager of income property. The culture which had been acquired by their daughter Lyda was in the classical type of education. The brother had developed his natural talents to the extent that he was a capable, well trained lawyer, having special acquaintance with trust and related matters. He was given to making sharp taunts toward his sister, expressing to her that she lacked physical charm and possessed physical disabilities (which were really non-existent un-

less she has recently been remarkably reconstructed) that would make her undesirable in the marriage market except to a fortune hunter to whom she would have strong attraction solely because of the substantial nature of her then prospects of inheritance and later realization of those prospects. The evidence indicates that Mr. Richman did believe that his sister would be naturally attractive to fortune hunters and did tend to regard her male friends as either casual acquaintances or direct seekers for her financial bounty. [6] He pointedly emphasized his view that no one else would be interested in her. He did consider himself (rightfully so) a very well educated and capable lawyer. This accomplishment was continually in plaintiff's mind.

Mrs. Tidwell, during the time that she was Mrs. Nagel and subsequently unto the present time, has been plagued with occasional, but sometimes very substantial, legal problems. She did not get along well with her first husband and ultimately divorced him. There was a property settlement in the course of dissolution of that unhappy marital union. She lacked education and schooling in tax matters and her lawyer brother possessed them to a high degree. He acted as her attorney in the liquidation of her marital problem and in the making of her tax returns. The evidence shows that whenever she needed a lawyer, she turned to her brother who was ever available, competent and, while a little patronizing toward his sister, efficient in handling her legal needs. The parents had been careful, prudent and efficient in putting their affairs in order during

their retirement. They were trustors under a Declaration of Trust and although the evidence is meager on the point, it is uncontradicted that considerable saving in expense in the after death settlement of their affairs was accomplished by the fact that said Trust was in existence. There is evidence that plaintiff at one time told her brother that since so much in the way of property costs and taxation had been saved by the parents' Trust, it would be advantageous for the brother and sister (now plaintiff and defendant in this action) to have a similar trust. The whole sum of evidence, however, adds up to the fact that the brother, in early life, gained something of a mastery over his sister's will in connection with her thoughts concerning her estate and [7] that the real suggestion that there be a trust between these siblings, of divergent personality and objectives, was adroitly suggested by the brother. It appears that he always thought of the estate as something to be guarded, built up, and essentially kept intact (although the properties of which it consisted might be sold or exchanged). His thought was to hold the basic fortune and some of its increment together. Her philosophy was that she was a woman of means and might as well spend some of it. There is no suggestion in her conduct of financial profligacy, but her brother was, and still is, constantly fearful of dissolution of the estate he has seen and helped grow. He abhors her plan to give up the secure income derived from a good apartment property and collaborate with her husband in development of a more venturesome busi-

ness. It is true that the mere fact of brother and sister relationship does not in itself create a fiduciary status. It may well be, and in this case was, one of the ingredients in a fact situation leading to the creation of such a relationship. See *Johnson vs. Clark*, 7 Cal. 2d 529, at pp. 534-535:

“Plaintiff and defendant are sisters. The relation between sisters is not presumed to be confidential, as is the relation between husband and wife, parent and child, attorney and client, but a confidential relation between sisters may be shown to exist. (Citing cases) Blood relationship is an important factor in determining whether in fact a confidential relationship existed. (Citing case, *supra*) Where it is established as a fact that a confidential [8] relation exists between sisters, the rules governing confidential relations apply, and a presumption of undue influence arises from any transaction by which the person in the superior position gains an advantage over the other. (Citing cases.) Such transactions are constructively fraudulent, and the burden is cast upon the party who has gained the advantage to show fairness and good faith in all respects. Citing cases.)”. (Emphasis in quoted material.)

To similar effect is *Odell vs. Moss*, 130 Cal. 352, where it was said, at p. 356:

“The relationship of brother and sister is not in itself a fiduciary relation, but it is a material circumstance in considering the question whether, in fact, such a relation existed. * * *”.

Having observed and heard the brother and sister as they related their stories, each subjected to searching cross-examination, and also having in mind the testimony of other witnesses who testified to the point, the Court finds that a fiduciary relationship existed between brother and sister in the instant situation, from at least the time plaintiff became of age.

A still more definitely defined fiduciary relationship has existed at all times pertinent to the transactions in question because of an attorney and client relationship which began during the domestic trouble of plaintiff with her first husband and continued until shortly before plaintiff brought this action. [9]

The basic rule is stated in 6 California Jurisprudence 2nd 306, where Section 137 says:

“* * * The attorney’s relation to his client is both fiduciary, committing the attorney to the most scrupulous good faith, * * *.”

This is treated more fully at pages 317-319 of the same work where Section 142 says:

“* * * An attorney at law is not prohibited from entering into any business transaction with a client, touching or not touching the subject matter professionally entrusted to him by the client. Such transactions are, however, subject to a close scrutiny, and they must be shown to be fair in all respects. The attorney must prove that he has given to the client all that reasonable advice against himself that he would have given him against a third person regarding a similar transaction. Some cases go even

further by holding that the client is entitled to advice independent from that of the attorney though also stating that this element alone is not conclusive. The attorney is thus charged with the so-called presumption of undue influence.

“The presumption is based on the fiduciary character of the attorney-client relationship, and on a statutory provision to the effect that all transactions [10] between a trustee and his beneficiary, by which the trustee obtains any advantage, are presumed to be entered into without any consideration and under undue influence. That statute is applicable to the attorney-client relationship. The presumption is to the effect that ‘undue influence’ was used by the attorney in inducing the client to enter into the transaction, and that he did not give sufficient consideration to the client. This does not mean, however, that a total want of consideration is presumed. And, even where the presumption applies, and has not been rebutted, the transaction involved is not void, but merely voidable. A typical example of the application of the presumption of undue influence is the case of a will, drafted for a client by an attorney or under his direction or influence, whereby a disposition is made in favor of the attorney.”

It is of importance to measure the facts of the case against a rule stated in Section 143 of the same Chapter, at pp. 320-321, as follows:

“* * * The presumption of undue influence is applicable only to contracts entered into while the attorney-client relationship exists; it does not apply

to contracts which create the relationship. In negotiating the terms of the attorney's employment, the prospective client deals [11] with the attorney at arm's length. * * *".

It is uncontradicted that plaintiff consulted defendant whenever she needed counsel, and there is no doubt but that a general relationship of attorney and client existed at the time critical to the present transaction.

It is plain that defendant had ample counsel, and while this was entirely proper, possibly necessary and, in any event, wise, it is striking that in entering into the arrangement to which defendant now seeks to hold plaintiff for life, the plaintiff relied entirely upon defendant. Under the circumstances which created a fiduciary relationship upon two separate bases (amplified older brother and younger sister and attorney-client), it was the definite duty of Mr. Richman to insist that his sister have independent legal counsel before extending the general relationship of attorney and client into a lifetime employment of the attorney. This he not only did not do but tended to discourage while paying slight and nominal lip service to the principle.

This leads to a consideration of whether he has carried his burden. Very definitely he has not. He intended to and did secure an advantage. He obtained a lifetime contract of employment at a rate of compensation which, if not absolutely excessive, was at least in the upper limits of charges, and provided for permanent employment at fees which

would not have been agreed to by one looking for a trustee in an open competitive market.

Some apt language on the general duty of defendant appears in Bacon vs. Soule, 19 Cal. App. 428, at p. 434:

"The law relating to the subject of confidential relations has been so often declared and is generally so well [12] understood that a mere reference to its underlying principles will suffice for the discussion and decision of the paramount point presented upon this appeal. A 'confidential relation' in law may be defined to be any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party. Such a relation ordinarily arises where confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter's knowledge or consent. A 'fiduciary relation' in law is ordinarily synonymous with a 'confidential relation.' It is also founded upon the trust or confidence reposed by one person in the integrity and fidelity of another, and likewise precludes the idea of profit or advantage resulting from the dealings of the parties and the person in whom the confidence is reposed. (Civ. Code, sec. 2219; [Citing cases].)

"Confidential relations are presumed to exist between husband and wife, partners, and parent and

child, priest [13] and parishioner, principal and agent, guardian and ward, counsel and client, etc., and in each of said relations the party in whom the confidence is reposed must stand in his dealings with the other party unimpeached of the slightest abuse of the confidence reposed, and if he derives or claims any advantage from the relation, the law places upon him the burden of showing that the transaction out of which the advantage arose was fair and just and fully understood and consented to by the party confiding in him. * * *".

See also, Matter of Danford, 157 Cal. 425, at p. 429:

"* * * The relation between attorney and client is 'a fiduciary relation of the very highest character, and binds the attorney to most conscientious fidelity —uberrima fides.' (Cox vs. Delmas, 99 Cal. 104, 123, [33 Pac. 836].) It is one which precludes the attorney from obtaining any personal advantage by abusing the confidence reposed in him by his client. (In re Burris, 101 Cal. 624, [36 Pac. 101].) * * *"

It is true that Danford charged high fees for services not rendered, but this is so close to charging higher fees for actual services, than is ordinarily charged for such services, that the same principle is involved here although in a different degree.

As the relationship was already in existence and [14] related to future services, the exceptions mentioned in Cooley vs. Miller & Lux, 156 Cal. 510, will not save defendant but the general rules therein stated must be applied against him. See that case, at pp. 523, 524:

"The rule is well established that the relation of attorney and client is confidential in character and that any contract entered into between them while that relation continues whereby the attorney obtains an advantage from the client, is presumed to have been made by the client under the undue influence of the attorney. (Kisling vs. Shaw, 33 Cal. 440, [91 Am. Dec. 644]; Civ. Code, sec. 2235; 1 Story's Equity Jurisprudence, secs. 310, 311; 2 Pomeroy's Equity Jurisprudence, sec. 390.) In the section cited Mr. Pomeroy says: 'The presumption always arises against the validity of a purchase or sale between the client and attorney made during the existence of the relation. The attorney must remove that presumption by showing affirmatively the most perfect good faith, the absence of undue influence, a fair price, knowledge, intention, and freedom of action by the client, and also, that he gave his client full information and disinterested advice * * * If all these circumstances are proved the contract will stand; if not, it will be defeated or set aside.' The presumption does not apply to a [15] transaction in which the attorney openly assumes a hostile attitude to his client. (Johnson vs. Fesemeyer, 3 DeG & J. 22.) Nor is it applicable to a contract by which the relation is originally created and the compensation of the attorney fixed. The confidential relation does not exist until such contract is made and in agreeing upon its terms the parties deal at arm's length. * * *"

See also, Felton vs. LeBreton, 92 Cal. 457, at p. 469:

"While an attorney is not prohibited from having business transactions with his client, yet, inasmuch as the relation of attorney and client is one wherein the attorney is apt to have very great influence over the client, especially in transactions which are a part of or intimately connected with the very business in reference to which the relation exists, such transactions are always scrutinized by courts with jealous care, and are set aside at the mere instance of the client, unless the attorney can show by extrinsic evidence that his client acted with full knowledge of all the facts connected with such transaction, and fully understood their effect; and in any attempt by the attorney to enforce an agreement on the part of the client growing out of such transaction, the burden of proof is always upon the attorney to show that the dealing [16] was fair and just, and that the client was fully advised. (Citing cases.) In the words of Lord Eldon, he must make it manifest that he gave to his client 'all that reasonable advice against himself that he would have given him against a third person.' * * *".

The Declaration of Trust was, and is, voidable; and as plaintiff has sued to set it aside for the foregoing reasons, the Court holds that she has established her case, and the corpus of the Trust shall be distributed according to the interests of the Trustees. All questions and matters, except that the Trust be set aside and the corpus distributed, are expressly reserved to be treated in further proceedings here in the administration of a distribut-

ing receivership which will be ordered concurrently with this Memorandum.

Defendant has contended ratification, waiver and operation of the Statute of Limitations, because of certain amendments made to the Declaration, and certain consultations between plaintiff and attorneys in New Mexico.

The simple answer to all such questions is that the first legal consultations were had respecting substitution of beneficiaries upon plaintiff's death and did not go at all to the subject herein litigated.

Acts which will amount to undue influence arising from an elaborated brother-sister relationship are ordinarily of long rather than brief accumulation. Undue influence did not occur here in a day. It grew out of a succession of acts, long continued attitudes and a sequence of events which covered a long period of time. Conversely, [17] it did not terminate suddenly. Plaintiff was still under its influence when she first went to Mr. Jones (her New Mexico attorney) and her employment of him did not search out the vice in her brother's conduct or in the Declaration of Trust (which was in proper form—for many others but not this case). Plaintiff remained under the spell of undue influence until very shortly before the action was filed. She did not know the extent of advantage her brother had obtained until she asked him to renounce it. It was to her, a still not fully known quantity. She could not ratify what she did not understand.

Although it is clear that at all times before learn-

ing the extent to which she empowered defendant, plaintiff desired there be a trust, the facts compel a finding that the advantages given her brother in the trust indenture, and the rights surrendered to him by her therein, were not fully explained to her or understood by her. By reason of defendant's long standing attitude toward her, including his depreciation of her marriageability (except to an ill-motivated fortune hunter) she was, at the time she became a trustor, in that condition of subordination of her will to him which is colloquially described as "beaten down". Although she has now emerged from that state of being dominated, she came out of it slowly, just as an anesthetized person slowly returns to full control of conscious action. It cannot be said that she ratified a single one of defendant's acts after she became free from his domination, or understood fully the trust instrument which was so disadvantageous to her right to have funds for less conservative investment, if she so chose, and which gave him absolute control at high fees.

It is established that the three year period of [18] limitation of Section 338, Subsection 4, of the Code of Civil Procedure which provides that the cause is not "deemed to have accrued until the discovery" applies to cases of constructive fraud and undue influence. *Neet vs. Holmes*, 25 Cal. 2d 447; *Sears vs. Rule*, 27 Cal. 2d 131; *Victor Oil Co. vs. Drum*, 184 Cal. 226, 239.

Where there is a confidential relationship and the cestui places reliance on the fiduciary, the statute does not commence to run until the time of dis-

covery of the fraud. Hansen vs. Bear Film Company, Inc., 28 Cal. 2d 154.

Rottman vs. Rottman, 55 Cal. App. 624, states a rule (at p. 632) which the Court need not apply here but which answers many of defendant's contentions:

“* * * Another rule stated in the books is that the doctrine of laches is not strictly applied between near relatives * * *.”

See also, Bailey vs. New England Mut. Life Ins. Co., 35 Fed. Supp. 1007, at p. 1010:

“* * * Accepting the agreement in the belief that the deceased was dealing honestly with her, she was justified in resting in that belief, and was not called upon then or thereafter to make independent inquiry as to his good faith. * * *.” (Emphasis in quoted material.)

and Sibert vs. Shaver, 111 Cal. App. 2d 833; Craig vs. White, 187 Cal. 489; Feckenscher vs. Gamble, 12 Cal. 2d 482.

Counsel for plaintiff will prepare Findings of Fact, Conclusions of Law, and Judgment, which shall provide [19] for distribution of the estate as the interests of the parties in the corpus shall be determined by an accounting.

Dated: This 30th day of November, 1953.

/s/ ERNEST A. TOLIN,
U. S. District Judge

[20]

[Endorsed]: Filed November 30, 1953.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: Nov. 30, 1953, at Los Angeles, Calif.

Present: The Hon. Ernest A. Tolin, District Judge; Deputy Clerk: Wm. A. White; Reporter: Marie Zellner; Counsel for Plaintiff: Wm. P. Camusi; Counsel for Defendant: Jos. T. Enright.

Proceedings: Court hands counsel copies of its Memorandum of Decision, to Counsel. Court appoints Roy E. Hallberg as Receiver, fixes bond of said receiver in the amount of \$75,000, and orders that counsel for plaintiff draw formal order of appointment.

Filed memo of decision.

EDMUND L. SMITH,
Clerk

/s/ By WM. A. WHITE,
Deputy Clerk

[21]

[Title of District Court and Cause.]

ORDER APPOINTING RECEIVER

Whereas, the undersigned, Judge Presiding in the above entitled matter, has this day signed and filed a Memorandum of Decision decreeing and ordering the dissolution and termination of that certain inter vivos trust dated November 1, 1945 and its amendments thereto, all executed by and between plaintiff Lyda Tidwell and defendant Fred-

erick I. Richman, heretofore commonly known as the "Richman Trust," and referred to herein as the "former Richman Trust," and

Whereas, in the opinion of the court, it is necessary and desirable that a receiver be immediately appointed herein for the purposes of carrying out the decree and judgment of this court and in the best interests of all parties and for the protection and preservation of the assets of said former Richman Trust, and as hereinafter set out.

Now, Therefore, It Is Hereby Ordered that Roy E. Hallberg be, and he is hereby appointed, receiver of all the real and personal [22] property constituting the said former Richman Trust; that said property includes, among other things, five apartment houses, all located within the City of Los Angeles, County of Los Angeles, State of California, commonly known and designated as:

La Loma Apartments, 251 S. Olive, Los Angeles.

Oliver Cromwell Apartments, 418 S. Normandie, Los Angeles.

Canterbury Apartments, 1746 N. Cherokee, Los Angeles.

Fountain Manor Apartments, 5165 Fountain Ave., Los Angeles.

Western Arms Apartments, 1057 S. Western Ave., Los Angeles.

That the trust also includes, among other things, accounts receivable and funds in the name and/or control and/or possession of defendant Frederick I. Richman as trustee on deposit in the Union

Bank & Trust Company of Los Angeles, and elsewhere, and other assets which may hereinafter be determined or indicated by the court.

It Is Further Ordered that said receiver be, and he is empowered and directed to forthwith take possession of all of the above properties and assets and any other properties or assets which are, or are determined to be, a part of the said former Richman Trust; and said receiver is hereby empowered and directed to take possession of and to manage and operate said apartment houses and care for and protect the same and all other properties belonging to the said former Richman Trust, paying out of trust funds the operating expenses and proper and lawful liabilities of said property and former trust, or as ordered by the court herein.

It Is Further Ordered that said receiver be, and he is hereby empowered and directed, to forthwith take possession of all books of account, records, documents, cancelled checks, bank statements, correspondence and all files and records pertaining to the said former Richman Trust from the date of its inception to the date hereof and in the possession or under the control of defendant Frederick I. Richman, his agents, attorneys or representatives, and the said defendant Frederick I. Richman is directed, and he is ordered, to deliver forthwith all of said records and documents to the said receiver. [23]

It Is Further Ordered that said receiver give a sufficient bond in form and character satisfactory

to this court, and in the sum of \$75,000.00, conditioned upon the faithful performance of his duties as such receiver.

It Is Further Ordered that plaintiff Lyda Tidwell and her attorneys and defendants and their attorneys, and all other persons and each of them, be enjoined, and they are hereby restrained from disturbing possession of said receiver or in any manner molesting the said receiver of the said property, or interfering directly or indirectly, with the administration of the receivership.

It Is Further Ordered that said receiver shall continue in his duties until the distribution of the assets of the former Richman Trust to the parties as their interests shall appear or until further order of this court.

It Is Further Ordered that the receiver shall not distribute any part of the principal or income to either the plaintiff Lyda Tidwell or defendant Frederick I. Richman without specific order of this court.

It Is Further Ordered that the said receiver conduct and carry on until the further order of the court, the normal business and affairs of the said former Richman Trust and all matters incidental thereto or necessary in connection therewith, and that any of the parties hereto, including said receiver, may apply to the court from time to time for orders for the guidance or instructions of said receiver.

Dated this 30th day of November, 1953.

/s/ ERNEST A. TOLIN,
Judge

[24]

[Endorsed]: Filed November 30, 1953.

[Title of District Court and Cause.]

BOND OF RECEIVER

Know All Men By These Presents:

That we, Roy E. Hallberg, of Corona Del Mar, California, as Principal, and the Fidelity and Deposit Company of Maryland, a corporation duly incorporated under the laws of the State of Maryland, and authorized to act as Surety under the act of Congress approved August 13, 1894, whose principal office is located in Baltimore, State of Maryland, as Surety, are held and firmly bound unto the United States of America in the sum of Seventy-five Thousand and no/100 (\$75,000.00) Dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

The Condition of the Above Obligation Is Such, That, Whereas by an order of the United States District Court, for the Southern District of California, Central Division, duly made on the 1st day of December, 1953, in the above entitled action, the above Bounden Roy E. Hallberg was appointed Re-

ceiver therein, and he was ordered before entering upon the discharge of his duties as such Receiver, to [28] execute a bond according to law in said sum of Seventy-five Thousand and no/100 (\$75,000.00) Dollars;

Now, Therefore, if the said Roy E. Hallberg as such Receiver, shall faithfully discharge his duties in this action and obey the orders of the Court therein, then this obligation shall be null and void, otherwise to remain in full force and effect.

In Witness Whereof, the said Roy E. Hallberg has hereunto set his hand and seal and the said Company has caused this bond to be signed by its Attorney-in-Fact at Los Angeles, California, this 2nd day of December, 1953.

[Seal] /s/ ROY E. HALLBERG,
 FIDELITY AND DEPOSIT COM-
 PANY OF MARYLAND,
/s/ By ROBERT HECHT,
 Attorney in Fact

Examined and recommended for approval as provided in Rule 8.

/s/ JOHN WHYTE,
 Attorney

Approved this 2nd day of December, 1953.

/s/ ERNEST A. TOLIN,
 District Judge

[29]

Notary Public Verification attached.

[30]

[Endorsed]: Filed December 2, 1953.

[Title of District Court and Cause.]

PETITION FOR AUTHORITY TO EMPLOY
COUNSEL.

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

The verified petition of Roy E. Hallberg, respectfully
represents and shows as follows:

1. Petitioner is the duly appointed, qualified, and acting Receiver of all the real and personal property constituting the former Richman Trust.
2. Petitioner represents that it is necessary for him to employ legal counsel on a general retainer to represent him as counsel herein and to advise him concerning his powers, duties, and obligations as Receiver, to assist him in connection with all legal matters necessary for the protection, preservation or management of the assets of the former Richman Trust, to assist him in connection with the preparation of petitions or reports to this Court, including petitions for instructions to the Receiver herein, and to act in any and all legal matters that may arise in the course of the administration of the assets of said former Richman Trust, when and if they do arise. [34]
3. It may be necessary for counsel to appear in and prosecute or defend suits or proceedings, if any, when they arise, and to take all necessary and proper steps in other matters and things involved or connected with the affairs of said former Richman Trust, if and when the necessity exists therefor.

4. Petitioner proposes, upon the granting of this petition, to employ the firm of FitzPatrick & Whyte and John Whyte as such counsel, and they have agreed to accept as compensation for any services rendered to petitioner as counsel such reasonable amount as may be allowed by this Court.

5. Your petitioner is satisfied from the affidavit of John Whyte attached hereto that said attorneys represent no interest adverse to him as Receiver, or to any other party hereto, in matters upon which said attorneys are engaged, and that the employment of said attorneys under a general retainer would be for the best interests of the former Richman Trust.

Wherefore, petitioner prays approval of the employment, as an expense of administration herein, of Messrs. FitzPatrick & Whyte and John Whyte as attorneys for petitioner as Receiver of all the real and personal property constituting the former Richman Trust.

/s/ ROY E. HALLBERG,
Receiver

State of California,
County of Los Angeles—ss.

John Whyte, being first duly sworn, deposes and says:

1. He is an attorney duly admitted to practice law in the above entitled Court and is a member of the firm of attorneys, to wit, Messrs. FitzPatrick & Whyte, whom the Receiver desires should represent

him in the above entitled proceeding and for whose appointment as such attorneys a petition is being presented and filed by the Receiver herein.

Affiant and the members of his firm have not been and are not employed by or connected with any of the parties to the above entitled action or with any other person having any interest adverse to the Receiver.

/s/ JOHN WHYTE

Subscribed and sworn to before me this 2nd day of December, 1953.

[Seal] /s/ ELEANOR HUMPHREYS,
 Notary Public in and for said
 County and State [35]

[Endorsed]: Filed December 2, 1953.

[Title of District Court and Cause.]

**ORDER AUTHORIZING RECEIVER TO
EMPLOY COUNSEL**

Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, having filed his verified petition for authority to employ counsel as an expense of administration herein, and it appearing for the reasons shown therein that it is necessary for the Receiver to employ counsel, and the name of counsel proposed to be employed being shown in said petition, and it further appearing to the satisfaction of this Court

that said counsel represent no interest adverse to the Receiver or to any of the parties in the above entitled action in the matters upon which the Receiver is to be engaged, and it further appearing that the employment of FitzPatrick & Whyte and John Whyte would be in the best interests of all parties hereto, and that this cause is one justifying employment of counsel on a general retainer, it is

Ordered that the Receiver herein be and he hereby is authorized and directed to employ FitzPatrick & Whyte and John Whyte of Los Angeles, California, as counsel on a general retainer as an expense of administration herein to represent him in the matters mentioned in said petition, their compensation [36] for any services rendered to be such reasonable amount as may be allowed by this Court.

/s/ ERNEST A. TOLIN,
Judge

[37]

Affidavit of Service by Mail attached.

[41]

[Endorsed]: Filed December 2, 1953.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: December 2, 1953, at Los Angeles, Calif.

Present: The Hon. Ernest A. Tolin, District Judge; Deputy Clerk: Wm. A. White; Reporter: Virginia Wright; Counsel for Plaintiff, Wm. P. Camusi; Counsel for Defendant: Joseph T. Enright, Joseph L. Wyatt and Walter L. Nossman.

Proceedings: Ex parte.

Attorney Enright moves the Court to hold the case in status quo, pending the defendants right to move for a new trial or for a rehearing on the Court's decision. Mr. Enright further moves that case be held in status quo during the month of December, relative to tax matters.

Defendant further moves for leave to "Lodge" Notice of Appeal and that Court fix the amount of supersedeas bond.

It is Ordered that defendant is granted leave to "Lodge" Notice of Appeal.

It Is Further Ordered that hearing to fix amount of supersedeas bond is continued to 3:00 p.m. of this date.

Lodged defendant's Notice of Appeal. Filed Bond of Receiver in the amount of \$75,000. Filed Oath of Receiver, Roy E. Hallberg.

Attorney Nossaman argues motion in opposition to appointment of Receiver, and Attorney for plaintiff replies to said argument.

It Is Ordered that this cause is continued to December 3, 1953 at 10:00 a.m. for further hearing.

Adjourn 4:10 p.m.

EDMUND L. SMITH,
Clerk

/s/ By WM. A. WHITE,
Deputy Clerk

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: December 4, 1953, at Los Angeles, Calif.

Present: The Hon. Ernest A. Tolin, District Judge; Deputy Clerk: Wm. A. White; Reporter: Virginia Wright; Counsel for Defendant: Joseph L. Wyatt.

Proceedings: Attorney Wyatt presents to court form of Notice of Appeal defendant will file from order of court entered 11/30/53 re: appointment of Receiver Pendente Lite and requests court to fix amount of supersedeas bond on appeal.

The court deems Mr. Wyatt's remarks as further argument in support of motion to vacate order appointing Receiver and enters order denying said motion and further denies the motion to fix amount of supersedeas bond on appeal.

EDMUND L. SMITH,
Clerk/s/ By WM. A. WHITE,
Deputy Clerk

[40]

[Title of District Court and Cause.]

PETITION FOR AUTHORITY TO PAY
CHRISTMAS BONUSES

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

The verified petition of Roy E. Hallberg, by
John Whyte, one of his attorneys, respectfully rep-
resents and shows as follows:

1. Petitioner is the duly appointed, qualified and acting Receiver of all the real and personal prop-
erty constituting the former Richman Trust.
2. Petitioner represents that in the interest of maintaining harmony, cooperation and good will on the part of the employees of the five apartment houses constituting the major portion of the assets of the former Richman Trust, it is desirable that he promptly pay to each of said employees a Christmas bonus. Said five apartment houses are as fol-
lows:

Canterbury Apartment Hotel, 1746 North Chero-
kee, Hollywood 28, California.

Fountain Manor Apartment Hotel, 5165 Foun-
tain Avenue, Los Angeles 26, Calif. [43]

Oliver Cromwell Apartment Hotel, 418 South
Normandie, Los Angeles 5, California.

Western Arms Apartment Hotel, 1057 South
Western Ave., Los Angeles 6, California.

La Loma Apartment Hotel, 251 South Olive, Los
Angeles 13, California.

About 41 employees are employed in said apartment houses, including a manager for each apartment house, maids, housekeepers, desk clerks, and maintenance men.

3. Petitioner proposes to pay Christmas bonuses to said employees in an aggregate amount not to exceed \$600. He proposes to pay a bonus of from \$25.00 to \$50.00 to the manager of each said apartment house, the exact amount of each such bonus to be determined by the manager's seniority, her value as a manager, and the size of the apartment house. He further proposes to pay bonuses of from \$5.00 to \$20.00 to the various maids, housekeepers, desk clerks, and maintenance men, the exact amount of each such bonus to be dependent upon their seniority and the quality of their work.

4. Petitioner further represents that Christmas bonuses in approximately the same aggregate amount have been paid to said employees for several years last past.

5. Petitioner is temporarily out of the County of Los Angeles, State of California. This petition is made and executed by and through John Whyte, one of his attorneys, at his request.

Wherefore, petitioner prays that the above entitled Court make and enter its order authorizing him to pay Christmas bonuses in an aggregate amount not to exceed \$600 to the employees of the five apartment houses constituting the major portion of the assets of the former Richman Trust, the

specific amount of each bonus to be fixed in the discretion of your petitioner.

/s/ ROY E. HALLBERG,
Receiver

/s/ By JOHN WHYTE [44]

Duly Verified. [45]

[Endorsed]: Filed December 18, 1953.

[Title of District Court and Cause.]

ORDER AUTHORIZING RECEIVER TO PAY CHRISTMAS BONUSES

Upon reading and filing the verified petition of Roy E. Hallberg, Receiver, by John Whyte, one of his attorneys, for authority to pay Christmas bonuses, and good cause appearing therefor,

It Is Ordered that said Receiver be, and he hereby is, authorized to pay Christmas bonuses in an aggregate amount not to exceed the sum of \$600.00 to the employees of the five apartment houses constituting the major portion of the assets of the former Richman Trust, the specific amount of each bonus to be fixed in the discretion of said Receiver.

/s/ ERNEST A. TOLIN,
Judge [46]

Affidavit of Service by Mail attached. [47]

[Endorsed]: Filed December 18, 1953.

[Title of District Court and Cause.]

PETITION FOR AUTHORITY TO RENOVATE INDIVIDUAL APARTMENTS LOCATED IN FIVE APARTMENT HOUSES INCLUDED AMONG ASSETS OF FORMER RICHMAN TRUST

To the Honorable Ernest A. Tolin, Judge of the above entitled Court:

The verified petition of Roy E. Hallberg respectfully represents and shows as follows:

1. Petitioner is the duly appointed, qualified and acting Receiver of all the real and personal property constituting the former Richman Trust.
2. The major portion of the assets of the former Richman Trust consists of the following five apartment houses, to wit:

Canterbury Apartment Hotel, 1746 North Cherokee, Hollywood 28, Calif.

Fountain Manor Apartment Hotel, 5165 Fountain Avenue, Los Angeles 26, California.

Oliver Cromwell Apartment Hotel, 418 South Normandie, Los Angeles 5, California. [48]

Western Arms Apartment Hotel, 1057 South Western Avenue, Los Angeles 6, Calif.

La Loma Apartment Hotel, 251 South Olive, Los Angeles 13, Calif.

3. Many of the individual apartments located in each of said apartment houses, and particularly those located in the Western Arms Apartment Hotel and to a lesser extent those in the Oliver

Cromwell Apartment Hotel, are in need of repair and renovation. Specifically, many of said apartments need painting, many need new carpets, practically all need new floor and table lamps, nearly all of said individual apartments have old fashioned kitchen ranges concerning which the tenants constantly complain, many need new draperies, and the chairs and sofas in some apartments need to be upholstered and repaired.

4. Petitioner is informed and believes and therefore alleges that some individual apartments in each of said five apartment houses have not been painted or carpeted since the apartment house in which they are located became a part of the assets of the former Richman Trust. In this connection the Canterbury became a part of the assets of said former Richman Trust in 1948, the Fountain Manor in 1944, the Oliver Cromwell in 1950, the Western Arms in 1941, and the La Loma in 1949.

5. Conditions of disrepair vary greatly as among the individual apartments in each of the five apartment houses above mentioned. Petitioner is of the opinion that some apartments can be placed in good condition by an expenditure of not more than \$150. Petitioner is likewise of the opinion that the maximum cost of renovation for any one individual apartment should not exceed \$500. As a general rule, petitioner proposes to make such renovations only as individual apartments become vacant, although in a few instances it may become necessary to renovate an individual apartment while it is still

being occupied by a tenant in order to keep the tenant from vacating the apartment.

6. Petitioner represents to this Court that repair and renovation of the individual apartments in the manner and to the extent above mentioned [49] is essential to the continued efficient and economical operation of said apartment houses and to the conservation and preservation of the same for the following reasons, among others:

(a) The managers of said apartment houses have complained to petitioner that because of the poor condition of many apartments in their respective buildings, they are having trouble renting the same. At the present time there are approximately eight vacancies at the Western Arms, two or three vacancies at the Canterbury, and two or three vacancies at the Fountain Manor. If an apartment is allowed to remain vacant for any extended period of time, the resulting loss of income will soon exceed the cost of repair and renovation.

(b) In recent years there has been considerable new apartment house construction; consequently, competition for tenants has become keener. Naturally prospective tenants do not want a run-down apartment when a well-kept one of comparable size and location is available at only a slightly higher price.

(c) When apartments become run-down and thus must be rented at lower prices, they attract a poorer class of tenants which necessarily detracts from the desirability of the apartment house as a whole. The Oliver Cromwell, in particular, and to a lesser de-

gree the Canterbury, are located in areas which should attract a high class of tenants. These apartment houses should, if anything, be "up-graded" so as to take advantage of their location rather than be allowed to deteriorate.

(d) Poorly kept apartments tend to attract transients instead of the more desirable semi-permanent tenants. The difficulties encountered in keeping an apartment house filled to capacity are much increased when the house is compelled to cater to a transient trade.

Wherefore, petitioner prays that the above entitled Court make and enter its order authorizing him, as Receiver of all the real and personal property constituting the former Richman Trust, to renovate individual [50] apartments in the five apartment houses above mentioned in the manner hereinbefore specified and at a cost not to exceed the sum of \$500 for any one apartment.

/s/ ROY E. HALLBERG,
Receiver

This petition is granted following hearing in open Court, January 15, 1952.

/s/ ERNEST A. TOLIN,
Judge

[51]

Duly Verified.

[52]

[Endorsed]: Filed December 30, 1953.

[Title of District Court and Cause.]

CONSENT TO PETITION FOR AUTHORITY
TO RENOVATE INDIVIDUAL APART-
MENTS INCLUDED AMONG THE AS-
SETS OF FORMER RICHMAN TRUST

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

The verified petition of Roy E. Hallberg, request-
ing consent and authorization to renovate individual
apartments in apartment houses included among the
assets of the former Richman Trust has been this
day duly received by counsel for plaintiffs, and
after consideration, plaintiff Lyda Tidwell, by and
through her counsel, does hereby consent to the
granting of said petition upon the grounds and for
the reasons set forth in the petition of the said Roy
E. Hallberg.

That plaintiff notes this further evidence of the
unfortunate conditions which were allowed to come
about and exist in regard to the "management" of
said former trust assets by defendant Richman
and feels that it is apparently necessary, in accord-
ance with the Receiver's petition, for the proper
protection and preservation of her assets and one-
half interest in the former Richman Trust that said
petition be granted, [53] provided that said Re-
ceiver

1st. Expend only those sums and amounts to
carryout said work which he believes are necessary

and justified in maintaining or increasing the rental income;

2nd. Shall make a report each month, or as the court may direct, listing and covering the cost of such improvements or renovations for the past month or period; and

3rd. That such expenditures shall not be so great as to eliminate the possibility, in the not too distant future, of the regular distribution of some of the income from said former trust assets to the plaintiff, and as may be determined by the court.

Dated: January 8, 1954.

MARTIN, HAHN & CAMUSI

/s/ By WILLIAM P. CAMUSI,
Attorneys for Plaintiff [54]

Acknowledgment of Service attached. [55]

[Endorsed]: Filed January 8, 1954.

[Title of District Court and Cause.]

**JUDGMENT FOR REVOCATION AND AVOID-
ANCE OF TRUST, AND APPOINTMENT
OF RECEIVER**

The above entitled cause came on for hearing as to one issue which had been severed from others, before the Honorable Ernest A. Tolin, judge presiding, without a jury, and plaintiff appearing in person and by her attorneys, Laurence B. Martin and William P. Camusi, of Martin, Hahn & Camusi, and defendant Frederick I. Richman appearing in

person and by his attorneys, Joseph T. Enright and also Walter L. Nossaman and Joseph L. Wyatt, Jr., of Brady, Nossaman & Paulston, and the court having determined that a number of issues were involved in plaintiff's Complaint, all of which involved defendant Frederick I. Richman, and only some of which involved one or more different and other defendants, and the first basic issue being that of fraud and undue influence in the execution of the trust executed between plaintiff and defendant Frederick I. Richman, and said issue [79] involving plaintiff's first claim for revocation and avoidance of the trust and the amendments thereto, and said claim pertaining only to plaintiff and said defendant Frederick I. Richman, and said issue having been severed and tried separately in the furtherance of convenience and justice, and defendant Frederick I. Richman having agreed to the severance of said issue for trial, and the court having expressly directed the entry of final judgment herein upon plaintiff's claim for revocation and avoidance of said trust and the amendments thereto, upon an express determination that no just reason for delay exists in the entry of judgment on said claim, and the court being fully advised in the premises,

Now, Therefore, It Is Ordered, Adjudged and Decreed that the said inter vivos trust dated November 1, 1945, and executed by and between plaintiff Lyda Tidwell and defendant Frederick I. Richman, be and the same is hereby ordered to be void, dissolved, cancelled and revoked, and the same is of no further force or effect; and

It Is Further Ordered, Adjudged and Decreed that the first amendment to said trust, dated August 3rd, 1948, and that the second amendment to said trust, dated November 20th, 1950, and each of them, be and the same are hereby declared to be void, dissolved, cancelled and revoked, and that the same are of no further force or effect; and

It Is Further Ordered, Adjudged and Decreed that plaintiff is entitled to the ownership and distribution to her, free and clear of said trust and the amendments thereto, and each of them, of her interest in the assets which comprised said trust, together with such additional assets, if any, as plaintiff may be adjudged entitled to after an accounting; and

It Is Further Ordered, Adjudged and Decreed that a receiver shall be appointed to seize and hold all of the said assets of the said trust of November 1, 1945, pending an accounting, [80] and determination of the respective interests of the beneficiaries in the corpus of the Trust and/or pending the distribution of said assets to plaintiff and defendant as their interests may appear; and

It Is Further Ordered, Adjudged and Decreed that said receiver shall manage, operate and control the assets of the said trust in such a manner as to conserve and maintain insofar as possible, the status quo of the condition, quality and nature of said assets, and each of them, pending said accounting and pending distribution of said assets to the plaintiff and defendant as their interests may appear;

and this court retains jurisdiction of this cause for the purpose of enforcing this judgment and any further orders made herein, as well as for the purpose of making final disposition of other issues still pending in this cause; and all questions of the proportions in which plaintiff and defendant own the corpus and all questions of accounting are reserved.

It Is Further Ordered, Adjudged and Decreed that plaintiff is entitled to her costs and disbursements incurred in the sum of \$2,364.78.

Dated this 21st day of January, 1954.

/s/ ERNEST A. TOLIN,
Judge

[81]

[Endorsed]: Filed Jan. 21, 1954. Entered Jan. 22, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
RECEIVER MUST FILE HIS FIRST RE-
PORT AND PETITION FOR INSTRU-
CTIONS, AND SUPPORTING AFFIDAVIT

Upon reading and filing the affidavit of John Whyte attached hereto, and good cause appearing therefor:

It Is Ordered that the time within which Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, must file his first report and petition for instruc-

tions pursuant to the terms of Rule 18(b), Local Rules So. District, Calif., is hereby extended to and including March 20, 1954.

Dated: January 29, 1954.

/s/ ERNEST A. TOLIN,
Judge.

[82]

AFFIDAVIT OF JOHN WHYTE

John Whyte, being first duly sworn, deposes and says: That he is and at all times herein mentioned was duly admitted to practice in the above entitled Court; that he is a partner in the law firm of FitzPatrick & Whyte, 756 South Broadway, Los Angeles 14, California; and that he is one of the attorneys of record for Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust.

Under the terms of Rule 18(b) of Local Rules So. District, Calif., said Receiver is required, within sixty days after his appointment, to file with the above entitled Court a report and petition for instructions. Said Receiver was appointed on or about November 30, 1953. Said Receiver is unable to file said report and petition for instructions within said period of sixty days for the following reasons:

Affiant had expected to be available during virtually the entire week commencing January 24, 1954, for counsel with the Receiver and his book-keeper, Mr. Roy Harrison, with regard to the preparation of said report and petition for instructions. However, affiant was unexpectedly detained in a

hearing before Judge Peirson Hall of the above entitled Court during several full days of said week and has accordingly been unable to devote sufficient time to the preparation of said report and petition for instructions.

Affiant has been informed by Mr. Roy Harrison, said Receiver's bookkeeper, that said Harrison has had considerable difficulty in assembling the accounting data which must be included in said report, notwithstanding the fact that he has been working up the same for a number of days. Said Harrison has further informed your affiant that he will be unable to have said accounting data in final form prior to some time early in the week commencing January 31, 1954.

Wherefore, affiant prays that the time within which said Receiver must file said report and petition for instructions be extended to and including February 8, 1954.

/s/ JOHN WHYTE

Subscribed and sworn to before me this 29th day of January, 1954.

[Seal] /s/ JOSEPH L. HERBERT,
 Notary Public in and for said
 County and State. [83]

[Endorsed]: Filed February 1, 1954.

[Title of District Court and Cause.]

NOTICE OF APPLICATION AND MOTION FOR PERMANENT RECEIVER

To Frederick I. Richman, Defendant, and to Joseph T. Enright and Brady, Nossaman & Paulston, His Attorneys, and to all known creditors of the former Richman Trust, a correct list of the names and addresses of said creditors, who are being given notice hereof, being attached hereto, marked Exhibit "A" and expressly and by this reference incorporated herein and made an integral part of this notice:

You and Each of You Will Please Take Notice that plaintiff, Lyda Tidwell, will apply to and move the above entitled court, in Department 6 thereof, on the 15th day of February, 1954, at the hour of 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, for the appointment of a permanent receiver to take charge of and conserve the assets of the former Richman Trust, in such manner and upon such terms and conditions, and with such authority, as the court may determine fitting and proper.

The said application and motion will be made and based upon the [84] verified Complaint on file in this cause, and upon all of the papers, pleadings, affidavits, documents, minutes and all records on file or in evidence in the above entitled cause, and upon the Reporter's Transcript, and more particularly upon a Memorandum Decision signed by the Hon. Ernest A. Tolin, judge of the above entitled court

and dated November 30, 1953, and upon the hearings or proceedings incident to and the Order appointing a Temporary Receiver of said former Richman Trust, duly signed on November 30, 1953, and on the Findings of Fact and Conclusions of Law and the Judgment in favor of plaintiff for the Revocation and Avoidance of the Trust and Appointment of Receiver, all duly signed by the Honorable Court in the above entitled cause on the 21st day of January, 1954, and now in file in said case, and finally, upon any affidavits as may be filed herein, provided plaintiff deems the same to be either necessary or appropriate.

At the time of the hearing and determination of said Motion and Application, plaintiff will request and seek the appointment of Roy E. Hallberg to act as Permanent Receiver, he having heretofore been designated as Temporary Receiver in the above entitled cause.

Dated: February 4, 1954.

MARTIN, HAHN & CAMUSI,
/s/ By LAURENCE B. MARTIN,
Attorneys for Plaintiff. [85]

EXHIBIT "A" ON MOTION FOR
PERMANENT RECEIVER

List of All Known Creditors of Former Richman Trust, Both Specific and Contingent, at Close of Business on February 2, 1954.

Arrowhead & Puritas Waters, Inc., 1566 East Washington Boulevard, Los Angeles 21, California.

Arden Farms Co., 103 South Hamel Road, Los Angeles 48, California.

Ace Specialty Company, 5285 West Pico Boulevard, Los Angeles, California.

Barker Bros. Corporation, 818 West 7th Street, Los Angeles, California.

H. L. Byram, Tax Collector, Hall of Justice, Los Angeles 12, California.

California Refrigeration Maintenance Co., 5905 Melrose Avenue, Los Angeles 38, California.

Cascade Laundry, 4414 Santa Monica Boulevard, Los Angeles 29, California.

Certified Paint Co., 4459 Sunset Boulevard, Los Angeles 27, California.

City Curtain & Blanket Cleaning Co., 5155 South Western Avenue, Los Angeles 37, California.

Columbia Pest Control Co., 101 North Virgil Avenue, Los Angeles 4, California.

Crescent Refining & Oil Co., 2460 East Twenty-Eighth Street, Los Angeles 58, California.

Consolidated Mattress Co., 6912 Santa Monica Boulevard, Los Angeles 38, California.

Director of Internal Revenue, Federal Building, Los Angeles 12, California.

Department of Employment, 1025 P Street, Sacramento 14, California.

Department of Water & Power, 207 South Broadway, Los Angeles, California.

Robert H. Dulley and Co., 3750 West Sixth Street, Los Angeles 5, California.

Elevator Maintenance Company, Ltd., 1316 Glendale Boulevard, Los Angeles 26, California.

Jesse M. Few Electric, 1515 West Seventh Street, Los Angeles 17, California.

Frazer Bros. Oil-Burner Company, 1044 South Western Avenue, Los Angeles 6, California.

Charles R. Hadley Co., 330 No. Los Angeles Street, Los Angeles, California.

Red Lilly Plumbing, 2316 Hyperion Avenue, Los Angeles 27, California.

Los Angeles Soap Co., 617 East First Street, Los Angeles 54, California.

Murphy Bed Sales Company, 8048 West Third Street, Los Angeles, California.

Mutual Benefit Life Insurance Company and its correspondent Pacific Mortgage Corp., c/o Pacific Mortgage Corporation, 210 West Seventh Street, Los Angeles 14, California.

A. F. McConnell, 418 South Normandie Avenue, Los Angeles 5, California. [86]

Walter C. Peterson, City Clerk, License and Sales Tax Division, Room 1, City Hall, Los Angeles 12, California.

Pacific Telephone and Telegraph Company, 740 South Olive Street, Los Angeles, California.

Paramount Cleaning & Dyeing Service, 4368 West Third Street, Los Angeles 5, California.

Pfeiffer Upholstering Company, 4812 So. Western Avenue, Los Angeles, California.

Frederick I. Richman, 926 Subway Terminal Building, 417 South Hill Street, Los Angeles, California.

Simpson's Wholesale Lighting Supplies, 1906 Third Avenue, Los Angeles 18, California.

Southern California Gas Company, 810 South Flower Street, Los Angeles, California.

Western Union, 741 South Flower Street, Los Angeles 17, California. [87]

Affidavit of Service by Mail attached. [88]

Acknowledgment of Service attached. [89]

[Endorsed]: Filed Feb. 4, 1954.

[Title of District Court and Cause.]

STATEMENT OF REASONS AND POINTS
AND AUTHORITIES IN SUPPORT OF
APPLICATION AND MOTION FOR PER-
MANENT RECEIVER

The numerous reasons justifying and requiring the appointment of a receiver in accordance with the Findings of Fact and Conclusions of Law and Judgment, heretofore signed and filed, are so apparent as to not require any detailed statement, since they are all so well known to the court and respective parties. The Judgment and Findings are reason enough. Suffice it to say that the irreconcilable differences between the parties, the nature of the charges made and proven as against the defendant Richman, and the necessity of protecting and preserving the estate and interest of plaintiff in the former trust property until the matter may be finally disposed of one way or the other, all are adequate enough for the imperative urgency of a permanent receiver.

An additional reason for the appointment of the present receiver as a permanent receiver is because of his familiarity with the properties and the fact that he has now had sufficient experience to know the requirements and problems incident to the management, care and preservation of these [90] properties. Many of the reasons justifying and requiring the appointment of a receiver in accordance with the judgment on the issue already determined are the same as, or akin to, the reasons detailed in the Points and Authorities heretofore served and filed in support of the appointment of a temporary receiver or a receiver *pendente lite*. Rather than clutter the record with repetitious material, we respectfully refer the court and the parties to the Memoranda of Points and Authorities previously filed in support of our application for a receiver, and by this reference incorporate the points and authorities mentioned in said briefs respecting said matter herein, as though set forth here in full.

A receivership is necessary to protect the interests of all parties to a joint venture or partnership *pendente lite* or after judgment.

Moore vs. Oberg, 61 C. A. (2d) 216

McNeil vs. Graves, 92 C. A. (2d) 371

Armbrust vs. Armbrust, 75 C. A. (2d) 272.

A receiver may be appointed to carry out or protect the integrity of a judgment rendered:

In 75 C. J. Sec. 692, it is stated:

“The court may in its final decree on the merits appoint a receiver as a proper means of enforcing

the decree and for the purpose of protecting and preserving the property so that the decree may be effective to the fullest extent of the rights which it intended to fix."

In accord: Hunt Prod. Co. vs. Burrage, 104 S. W. (2d) 84; Edwards vs. Edwards, 36 S. W. 1080, 14 Tex. Civ. App. 87; Stockton vs. N. J. Cent. R. Co., 25 Atl. 942, 15 N.J.Eq. 489.

At page 1104 of 4 C. J. Sec. it is said:

"The conservation or preservation of property pending an appellate proceeding may be effected through a receiver appointed for that purpose."

In accord: McCarthy vs. Kurkjian, 232 Pac. 161, 69 C. A. 682. [91]

Power is inherent in the Federal Court to preserve property in controversy by appointment of a receiver.

In re Reisenberg, 208 U. S. 90, 109; 52 L. Ed. 403; 28 S. Ct. 219; Ward vs. Central Trust Co. of Ill., 252 Fed 127.

Respectfully submitted,

MARTIN, HAHN & CAMUSI,
/s/ By LAURENCE B. MARTIN,
Attorneys for Plaintiff. [92]

Acknowledgment of Service attached. [93]

[Endorsed]: Filed Feb. 4, 1954.

[Title of District Court and Cause.]

DEFENDANTS' EXHIBIT C

STIPULATION

Whereas, plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, have arrived at terms of an agreement which will result, when completed, in the final settlement and disposition of the above entitled matter, and,

Whereas, Lyda Tidwell, plaintiff, under said agreement, is to purchase all of defendant, Frederick I. Richman's share in the assets referred to in this trial as the "Richman Trust", and hereinafter referred to as the Richman Trust, and Lyda Tidwell already having paid to said Frederick I. Richman the sum of One Hundred Thousand Dollars (\$100,000.00) in pursuance of the terms of the above said agreement, and the parties hereto desiring also, in accordance with the terms of said agreement, that the Receiver be relieved of his responsibilities in connection with the management, control and possession of the assets of the said Richman Trust, with the exception of money in bank and now under the control of the Receiver; [94]

Now, Therefore, It Is Hereby Stipulated by and between counsel for plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, that the Receiver, Roy E. Hallberg, be relieved of the possession, control and management of the assets of the said Richman Trust, excepting funds in bank and under the control of said Receiver, as of five o'clock Sunday, February 28, 1954, and that plaintiff, Lyda Tidwell,

be given possession, control and management of all the assets of the Richman Trust with the exception of money in bank, as above stated, and that all books and records now in the possession of the Receiver, Roy E. Hallberg, remain in their present location at the Oliver Cromwell Apartments, 418 South Normandie, Los Angeles, California, and that the same be not removed therefrom pending final settlement of the above entitled matter, and that the court make an order for the purpose of carrying this Stipulation into effect.

Dated: February 26, 1954.

BRADY, NOSSAMAN &

PAULSTON and

JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT,

Attorneys for defendant, Frederick
I. Richman.

MARTIN, HAHN & CAMUSI,

/s/ By WILLIAM P. CAMUSI,

Attorneys for plaintiff,
Lyda Tidwell. [95]

[Endorsed]: Filed Feb. 26, 1954.

[Title of District Court and Cause.]

DEFENDANTS' EXHIBIT D

ORDER

Whereas, plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, have agreed to the terms of a settlement disposing of the above entitled matter,

and said plaintiff and defendant are desirous of relieving the Receiver of possession, control and management of the assets formerly designated and referred to as the Richman Trust, with the exception of money in bank and under the control of the Receiver;

Now, Therefore, It Is Hereby Ordered, that the Receiver, Roy E. Hallberg, shall be relieved of his active duties of management, control and possession of the assets known as the Richman Trust, as of five o'clock p.m., Sunday, February 28, 1954, and that the said Receiver, Roy E. Hallberg, his agents and employees, and all other agents, servants and employees of the Richman Trust, give over control and possession to Lyda Tidwell, plaintiff, of all the assets of the said Richman Trust, excepting money in bank and under the control of the said Receiver, but [97] including all other said assets of the Richman Trust and the following apartment houses and their contents:

La Loma, located at 251 South Olive Street, Los Angeles, California;

Fountain Manor, located at 5165 Fountain Avenue, Los Angeles, California;

Oliver Cromwell, located at 418 South Normandie Avenue, Los Angeles, California;

Western Arms, located at 1057 South Western Avenue, Los Angeles, California; and

Canterbury, located at 1746 No. Cherokee, Los Angeles, California.

It Is Further Ordered, that plaintiff, Lyda Tidwell, shall have exclusive possession, control and management of the above described assets, beginning at 5 o'clock p.m., Sunday, February 28, 1954.

It Is Further Ordered, that the books and records pertaining to the Richman Trust and the assets therein shall be given into the possession and control of plaintiff, Lyda Tidwell, but shall remain in their present location in the Oliver Cromwell Apartments, and neither plaintiff, Lyda Tidwell nor defendant, Frederick I. Richman, nor any other person, shall remove the said books and records, or any part thereof, from said location until further order of court, and all records shall remain in their present status except for legitimate entries and transactions to be made therein in the course of the management of the assets formerly known as the Richman Trust.

It Is Further Ordered, that said books and records shall be made available at all reasonable times to the said Receiver, Roy E. Hallberg, for the purpose of preparing his accounting for presentation to the court.

Dated: February 26, 1954.

/s/ ERNEST A. TOLIN,
Judge

[98]

[Endorsed]: Filed Feb. 26, 1954.

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF FEES TO
ATTORNEYS FOR RECEIVER

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

Come now Messrs. FitzPatrick & Whyte and John Whyte, as attorneys for Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, and for their petition for allowance of fees for legal services heretofore necessarily performed by them for and on behalf of said Receiver from and after November 30, 1953, to and including March 17, 1954, respectfully represent and show as follows:

1. Richard FitzPatrick and John Whyte are and at all times herein mentioned were attorneys duly admitted to practice law in the above entitled Court, and they are and at all times herein mentioned were engaging as co-partners in the general practice of the law under the firm name of FitzPatrick & Whyte, with offices at 756 South Broadway, in the City of Los Angeles, State of California. Richard FitzPatrick was duly admitted to practice law in all courts of the State of California in December 1917, and ever since [100] September 1919, he has practiced law continuously in this state. John Whyte was duly admitted to practice law in all courts of the State of California in January 1941, and ever since that time, with the exception of a period commencing in July 1941, and ending in December 1942,

he has practiced law continuously in this state.

2. Petitioners FitzPatrick & Whyte and John Whyte are and ever since December 2, 1953, have been the duly authorized and acting attorneys for Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, said Roy E. Hallberg being sometimes hereinafter referred to as "the Receiver." In this connection petitioners allege that on December 2, 1953, the Receiver duly petitioned this Court for authority to employ legal counsel to advise him concerning his powers and duties as Receiver, to assist him in connection with all legal matters necessary for the protection, preservation or management of the assets of the former Richman Trust, to assist him in connection with the preparation of petitions or reports to this Court, and to act generally in any and all legal matters that might arise in the course of his administration of said assets. On December 2, 1953, by order duly signed and filed, this Court authorized and directed the Receiver to employ Messrs. FitzPatrick & Whyte and John Whyte of Los Angeles, California, as legal counsel on a general retainer and as an expense of administration herein, to represent him in the matters specified in the above mentioned petition, and the Receiver did immediately employ said counsel.

3. In anticipation of and pursuant to said employment above referred to in Paragraph 2, petitioners have necessarily performed legal services for and on behalf of the Receiver from and after November 30, 1953, to and including March 17, 1954,

in connection with the conduct and carrying on by the Receiver of the normal business and affairs of the former Richman Trust and matters incidental thereto. Petitioners have devoted a total of 91 hours of attorneys' time to the performance of said legal services as shown on daily time sheets kept by attorneys in the offices of FitzPatrick & Whyte. Of this total of 91 hours of attorneys' time, 88.8 hours are allocable to the services [101] of John Whyte and 2.2 hours are allocable to the services of Richard FitzPatrick.

4. The nature of said legal services which have been necessarily so performed by petitioners is likewise shown on said daily time sheets and is as follows:

Nature of Legal Services Performed
Date—1953

November 30—Conference with Hallberg re his appointment as Receiver. Study of Judge Tolin's memorandum of decision in the above entitled action. Conference with Judge Tolin and Hallberg re duties of Receiver and his attorneys.

December 1—Conference with Hallberg and officers of Union Bank & Trust Co. re change of former Trust's bank account to name of Hallberg, as Receiver of Assets of Former Richman Trust and re proper accounting for checks written by plaintiff Tidwell or defendant Richman prior to Hallberg's appointment as Receiver. Whyte accompanied Hallberg on visits to La Loma, Fountain Manor, Canterbury and Western Arms Apartment Hotels where they conferred with the managers re change

in administration of former Trust properties, collection of rents, etc.

December 2—Prepared petition and order for appointment of FitzPatrick & Whyte and John Whyte as attorneys for Receiver. Conference with Hallberg re his bond as Receiver and making arrangements with Fidelity and Deposit Co. of Maryland re issuance of bond. Telephone call to Camusi (one of plaintiff's attorneys) for information re latest developments in appointment of Receiver. Appearance in Judge Tolin's chambers and presentation to him of Receiver's petition for authority to employ counsel and order employing said counsel—order signed and filed. [102]

December 3—Conference at Richman's office among Messrs. Richman, Harrison, Hallberg and Whyte re assets comprising former Richman Trust and manner in which trust accounts had been kept. Arranging with Union Bank & Trust Co. for honoring of checks drawn by Richman. Advising Receiver re insurance matters and telephone call to Robert Dulley, insurance broker.

December 7—Telephone call from Camusi requesting information on Receiver's activities. Telephone call to Harrison, who had been hired as a bookkeeper by the Receiver, re progress being made toward orderly administration of receivership.

December 10—Telephone call to Harrison for report on progress being made in setting up receivership books, paying taxes, etc.

December 12—Telephone call from Harrison re numerous problems connected with receivership.

December 16—Telephone call from Camusi inquiring about progress of receivership. Telephone call from Mrs. Hallberg re problems incident to opening new bank account with branch of Citizens National Bank & Trust Co. and telephone conference with official of that bank.

December 17—Telephone call from Hallberg re petition for authority to pay Christmas bonuses and re petition for authority to renovate individual apartments in various apartment buildings.

December 18—Telephone calls to and from Hallberg to obtain facts necessary for preparation of petition for authority to pay Christmas bonuses. Preparation of said petition. Telephone call from Camusi asking for information concerning progress of receivership. Telephone call from Hallberg re above mentioned petition. Presentation of petition for authority to pay Christmas bonuses and order thereon to [103] Judge Tolin in chambers—order signed and filed. Telephone call to Harrison directing him to issue bonus checks. Conference with Mrs. Hallberg re factual data needed to prepare petition for authority to renovate individual apartments. Telephone call from Harrison re manner of paying Christmas bonuses.

December 21—Telephone call from Hallberg re preparation of petition for authority to renovate individual apartments. Consideration of local Federal District Court rules re reports and accounts to be rendered by the Receiver.

December 22—Telephone call from Hallberg re

preparation of petition for authority to renovate individual apartments and other matters.

December 23—Preparation of petition for authority to renovate individual apartments. Telephone call to Hallberg for information needed for said petition.

December 24—Conference with Hallberg at Oliver Cromwell Apartment Hotel re petition for authority to renovate individual apartments, transfer of fire insurance policies to a mutual company, Receiver's first report to be filed with Court, carrying out of Richman's contracts to purchase smog control incinerator equipment, bookkeeping problems, and other matters.

December 28—Telephone calls to and from Harrison re installation of smog control incinerator equipment at Canterbury and Oliver Cromwell apartments and re handling of petition for authority to renovate individual apartments.

December 27—Study of files with reference to installation of smog control incinerator equipment at Canterbury and Oliver Cromwell apartments and consideration of liability of Receiver to carry out Richman's contracts with Air Pollution Control, Inc. for purchase and installation of said [104] equipment.

December 29—Taking petition for authority to renovate individual apartments to Judge Tolin's chambers. Telephone call to Harrison re court order requiring Receiver to permit plaintiff's appraisers to visit apartment buildings and plaintiff's accountants to inspect books.

1954

January 4—Conference with Judge Tolin in chambers re contents of first report to be submitted by Receiver, petition for authority to renovate individual apartments, proposed petition for authority to inventory assets, and other matters. Telephone calls from Mrs. Hallberg re these matters. Telephone call to Harrison re problems incident to inventorying all furniture and fixtures in the apartment buildings. Telephone calls to Camusi and to Enright (one of defendant's attorneys) requesting them to agree not to require a detailed inventory of every item of furniture and fixtures in the apartment houses—they both stated it was unnecessary.

January 5—Telephone call from Mrs. Hallberg re status of petition for authority to renovate individual apartments and necessity for inventorying furniture and fixtures. Conference with Judge Tolin in chambers re said petition for authority to renovate. Telephone call to Hallberg re forthcoming hearing on petition for authority to renovate and visit of plaintiff's appraisers to apartment buildings.

January 8—Conference with Mrs. Hallberg re inspection of apartment houses being made by plaintiff's appraisers and re inspection of receivership books to be made by plaintiff's accountants. Telephone call to Camusi re these matters. Telephone call from Enright re hearing on petition for authority to renovate individual apartments and re Hallberg's background as a businessman and apartment house manager. [105] Telephone calls from

Camusi re inspection of books by his accountants and telephone call to Mrs. Hallberg re this subject.

January 9—Telephone call from Hallberg re possible errors made by Richman in his accounting for trust properties and possibility of tax refunds as a result thereof—also re first report to be made by Receiver, renovation of individual apartments, and other matters.

January 11—Telephone call from Hallberg re possibility of tax refunds on account of items charged by Richman as improvements rather than expenses.

January 15—Telephone calls from Lawrence Martin (one of plaintiff's attorneys) and from Camusi re matters to be considered at hearing on Receiver's petition for authority to renovate individual apartments. Conference with Hallberg in preparation for said hearing. Court appearance re hearing on said petition—petition granted.

January 19—Preparing draft of Receiver's report. Telephone call to Harrison re data to be included therein.

January 25—Instructing and working with Harrison on preparation of schedules to be attached to Receiver's report. Drafting Receiver's report.

January 26—Conference with Hallberg re facts needed for preparation of his report. Telephone call from Camusi re proposed meeting with Hallberg and Whyte to consider prospects for future income from apartment houses.

January 27—Telephone call from Harrison re problems involved in preparing Receiver's report—Harrison also reported on criminal citation issued

for alleged violation of California Health and Safety Code in connection with operation of incinerator at Oliver Cromwell.

January 28—Conference with Harrison re preparation of accounting [106] data to be incorporated in Receiver's report.

January 29—Telephone call from Harrison re criminal citation in connection with incinerator at Oliver Cromwell. Preparation of ex parte order and affidavit extending time for Receiver to file his report and procuring Judge Tolin's signature thereon. Telephone call from Mrs. Hallberg re efforts being made to dismiss above mentioned criminal citation. Telephone call to Mr. Tow in office of Air Pollution Control District re said criminal citation. Telephone conversation with Judge Tolin re Receiver's report—the Judge decided to modify Rule 18(b) of the local Federal District Court rules so as to postpone filing thereof until March 20, 1954, in order that it might cover a full three months period. Telephone call to Harrison re delay in filing above mentioned report—he requested advice re problem of tenant who owed rent and had left clothes in his apartment. Conference with Hallberg re his report. Telephone call to Camusi re delay in filing said report.

February 1—Appearance in Department 30A of Los Angeles Municipal Court re arraignment of Mrs. McConnell, manager of Oliver Cromwell, she being a defendant in the criminal action brought by the City of Los Angeles for alleged violation of California Health and Safety Code resulting from smoke issuing from incinerator at Oliver Cromwell

—arraignment set over until February 23. Conference with Mr. Tow of Air Pollution Control District re said criminal action. Telephone call to Harrison urging him to have Air Pollution Control, Inc. proceed immediately with installation of smog control equipment at Canterbury. Telephone call from Mrs. Hallberg re result of court hearing. Dictating draft of Receiver's report and revising same. [107]

February 2—Telephone call from Harrison re tax returns to be filed by Receiver. Examination of defendant's moving papers re new trial. Telephone calls to and from Camusi re tax problems and necessity, if any, for moving for appointment of a permanent receiver. Telephone call to Harrison requesting names of known creditors to be notified of hearing on motion for appointment of Hallberg as a permanent receiver. Telephone call from Hallberg re tax problems. Conference with Judge Tolin in chambers re appointment of Hallberg as a permanent receiver.

February 3—Telephone call to Camusi re his making motion for appointment of Hallberg as a permanent receiver. Telephone calls from Harrison re persons to be included in list of known creditors. Studying letter from Enright as to who should petition for distribution of income. Telephone call from Mrs. Hallberg re tax problems, removal of part of parapet at Canterbury, and smog control matters. Conference with Mrs. Hallberg re such problems as smog control, desirability of selling Western Arms and Fountain Manor, tax returns, etc. Telephone conversation with Tow of Air Pollution Control

District re proposed conference with City Attorney's office and possible inability of Air Pollution Control, Inc. to perform their contract for installation of incinerator equipment at Canterbury. Telephone call to Air Pollution Control, Inc., re their ability to install smog control incinerator equipment promptly at Oliver Cromwell and Canterbury. Delivering list of known creditors to Camusi and obtaining from him copy of trust instrument for use in determining who should file 1953 income tax return.

February 4—Telephone call from Harrison re additions to list of known creditors and passing on of this information to [108] Camusi. Telephone call from Enright and discussion of smog control problems, removal of parapet at Oliver Cromwell and other matters. Telephone call from Mrs. Hallberg re tax and smog control matters. Letter to Air Pollution Control District re progress being made toward installation of incinerator equipment. Telephone call from Harrison re problems of tenants who haven't paid rent, tax information, and other matters.

February 6—Checking California lien law applicable to apartment houses in order to advise Harrison what to do with clothing left by guest with unpaid bill at Oliver Cromwell.

February 8—Telephone call to Harrison advising him what to do about guest with unpaid bill at Oliver Cromwell. Revising draft of Receiver's report.

February 9—Conference at City Attorney's office among a Deputy City Attorney and Messrs. Tow,

Enright, Hallberg and Whyte re above mentioned criminal complaint charging violation of California Health and Safety Code on account of smoke from incinerator at Oliver Cromwell—complaint dismissed.

February 10—Letter to Camusi showing income and expense of former Richman Trust for 1953. Revising Receiver's report and petition for fees.

February 12—Telephone call from Camusi re tax returns and hearing on motion for appointment of Hallberg as a permanent receiver. Telephone call from Harrison re his discharge by Hallberg.

February 13—Telephone call to Hallberg and discussion of problems incident to hearing on motion for his appointment as a permanent receiver, termination of Harrison's employment, and necessity for preparing and filing a schedule of known creditors within five days after hearing on his appointment [109] as a permanent receiver.

February 15—Court appearance re hearing on motion to make Hallberg a permanent receiver—this motion, together with defendant's motions for a new trial, etc., set over until March 8. Telephone call to Mrs. Findeisen, the new bookkeeper, not to prepare list of known creditors. Telephone call from Mrs. Hallberg re removal of parapet at Oliver Cromwell. Drafting Receiver's report and petition for allowance of fees.

February 16—Drafting petition for allowance of attorney's fees.

February 17—Dictating and correcting draft of petition for allowance of attorneys' fees. Dictating

notice of hearing on Receiver's report, his petition for allowance of fees, and petition of his attorneys for allowance of fees.

February 18—Revising draft of Receiver's report.

February 25—Telephone call from Camusi re termination of receivership by settlement of case. Telephone call to Hallberg reporting on this development.

February 26—Attending conference in Judge Tollin's chambers re settlement of case. Telephone call from Mrs. Hallberg re results of said conference.

February 27—Revising Receiver's report and petition for fees, as well as petition for fees to attorneys for Receiver, as necessitated by Court's order of February 26, relieving Receiver of his duties of active management as of February 28, 1954.

March 1—Conference with Mrs. Hallberg and bookkeeper at Oliver Cromwell re preparation of schedules to be attached to Receiver's report, re summary of Receiver's operations for January and February 1954, and re problems connected with turn-over of assets to Mrs. Tidwell. Telephone call to Camusi re problems connected with turn-over of assets [110] to Mrs. Tidwell, payment of bills, etc. Telephone call to Enright re schedule attached to Receiver's report showing creditors and amounts of their claims.

March 2—Dictating and revising statement of services performed by Receiver during January and February 1954, to be incorporated in his report. Telephone call from Camusi requesting that documents evidencing title to various properties be

turned over to Mrs. Tidwell, and re Receiver's accounting. Telephone calls to and from Mrs. Hallberg re documents to be turned over to Camusi. Details incident to preparation of Receiver's report. Dictating statement of services rendered by attorneys for Receiver for inclusion in their petition for fees. Telephone call to Camusi re delivery of title documents to his office.

March 4—Telephone calls to and from Mrs. Hallberg re payment of bills, particularly those accruing after February 28, 1954, and re turn-over of Richman's former files. Telephone calls to Camusi and Enright re these matters.

March 5—Telephone call to Mrs. Findeisen requesting information needed for Receiver's report.

March 7—Conference with Receiver and Mrs. Hallberg re problems incident to Receiver's final accounting and preparation of schedules to be attached to his report.

March 8—Dictating additional material to be incorporated in Receiver's report.

March 9—Incorporating additional material in Receiver's report and petition for fee. Telephone call to Camusi re closing of Receiver's books and payment of bills received after March 1, 1954.

March 10—Conference with Mrs. Hallberg and Mrs. Findeisen, the bookkeeper, at the Oliver Cromwell re Receiver's final report and preparation and format of schedules to [111] be attached thereto. Incorporating new material in draft of Receiver's report.

March 11—Revising Receiver's report and peti-

tion for fee as well as notice of hearing on various petitions and reports of the Receiver and his attorneys.

March 12—Adding material to Receiver's report and telephone call to Mrs. Hallberg for data to be incorporated therein. Telephone calls from Mrs. Hallberg re progress being made on schedules to be attached to Receiver's report.

March 13—Going over draft of his report and schedules to be attached thereto with the Receiver.

March 15—Conference with Judge Tolin in chambers re petition of Receiver's attorneys for allowance of fees. Revising said petition as well as Receiver's report and petition for fee.

March 17—Telephone conference with Camusi re closing of Receiver's books and re the reports and petitions to be filed by him and his attorneys. Proofreading final copies of Receiver's report and petition for fee and assembling schedules to be attached thereto. Proofreading final copies of petition of Receiver's attorneys for fees. Telephone call to Fidelity and Deposit Company of Maryland re possible rebate on premium paid for Receiver's bond.

5. Petitioners desire to call the Court's attention to the fact that certain of the legal services hereinabove referred to are in the nature of extraordinary, rather than ordinary, services. Into this category would fall the services rendered in connection with defending the Receiver and his agents against the criminal action commenced in the Municipal Court of the County of Los Angeles Judicial Dis-

trict by the Air Pollution Control District for alleged violation of sections of the California Health and Safety Code on [112] account of smoke issuing from the incinerator at the Oliver Cromwell. Through the joint efforts of petitioners and the Receiver, the Air Pollution Control District and the Los Angeles City Attorney's office were persuaded to dismiss this action. This smoke condition resulted from a failure to install smog control devices in the incinerators at the Oliver Cromwell and at the Canterbury, a duty which Frederick I. Richman, the managing agent and a trustee of the former Richman Trust, should have performed during his long administration of the assets of said Trust. Instead, this problem was passed on to the Receiver who was forced to defend a criminal complaint charging violations of law for which he was in no way responsible.

6. Petitioners allege that the reasonable value of their ordinary legal services as in Paragraph 4 above set forth, exclusive of the extraordinary services hereinabove referred to in Paragraph 5, is the sum of \$3,000. Petitioners do not wish to indicate any figure as representing the reasonable value of said extraordinary services but prefer that this Court should determine in its discretion what additional amount should be awarded to petitioners for the performance of said extraordinary legal services. With reference to this matter of fixing the reasonable value of their legal services, petitioners adopt and incorporate herein by reference each and every allegation set forth in Paragraph 8 of the first

and final report of Receiver and petition for allowance of fee to Receiver filed concurrently herewith.

Wherefore, petitioners pray that this Court make and enter its order fixing and allowing the sum of \$3,000.00 as a reasonable attorneys' fee to FitzPatrick & Whyte and John Whyte, the attorneys for the Receiver herein, for the ordinary legal services heretofore necessarily performed by them for and on behalf of said Receiver from and after November 30, 1953, to and including March 17, 1954, together with such further sum as this Court may in its discretion determine to be a reasonable attorneys' fee for the extraordinary legal services necessarily performed by them for and on behalf of the Receiver during the same period, and that said order authorize and direct the Receiver to pay said sum or sums forthwith to FitzPatrick & Whyte from funds on deposit in the Third and Western Branch of the [113] Citizens National Trust & Savings Bank of Los Angeles to the account of Roy E. Hallberg, as Receiver of the Assets of the former Richman Trust.

Dated: March 18, 1954.

FITZPATRICK & WHYTE,
JOHN WHYTE
/s/ By JOHN WHYTE,
Petitioners [114]

Duly Verified.

Acknowledgment of Service by Mail attached.

[Endorsed]: Filed March 18, 1954.

[115]

[Title of District Court and Cause.]

FIRST AND FINAL REPORT OF RECEIVER
AND PETITION FOR ALLOWANCE OF
FEE TO RECEIVER

To the Honorable Ernest A. Tolin, Judge of the
Above Entitled Court:

Comes now Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust (hereinafter sometimes referred to as "petitioner"), and for his first and final report and his petition for allowance of a fee to himself as Receiver for the period commencing December 1, 1953, to and including February 28, 1954, respectfully represents and shows as follows:

1. On November 30, 1953, by order of this Court duly signed, docketed and entered, petitioner was appointed Receiver of all the real and personal property constituting the former Richman Trust. Under the terms of said order petitioner was empowered and directed forthwith to take possession of all of the properties and assets which are, or were determined to be, a part of said former Richman Trust, including all books of account, records and files pertaining to said former Trust in the possession or under [116] the control of Frederick I. Richman or his agents. Said order also directed petitioner to give a bond in the sum of \$75,000, and on December 2, 1953, said bond was duly approved by this Court and filed herein.

2. On December 2, 1953, petitioner duly peti-

tioned this Court for authority to employ legal counsel to advise him concerning his powers and duties as Receiver, to assist him in connection with all legal matters necessary for the protection, preservation or management of the assets of the former Richman Trust, to assist him in connection with the preparation of petitions or reports to this Court, and to act generally in any and all legal matters that might arise in the course of his administration of said assets. On December 2, 1953, by order duly signed and filed, this Court authorized and directed petitioner to employ Messrs. FitzPatrick & Whyte and John Whyte of Los Angeles, California, as legal counsel on a general retainer and as an expense of administration herein, to represent him in the matters specified in the above mentioned petition, and petitioner did promptly employ said counsel.

3. On or about December 2, 1953, petitioner commenced to take possession of the properties and assets constituting the former Richman Trust. Among the first properties over which he assumed possession and control were the five apartment houses which constitute the principal assets belonging to said former Trust, to wit:

Canterbury Apartment Hotel, 1746 North Cherokee, Hollywood 28, California;

Fountain Manor Apartment Hotel, 5165 Fountain Avenue, Los Angeles 26, California;

Oliver Cromwell Apartment Hotel, 418 South Normandie, Los Angeles 5, California;

Western Arms Apartment Hotel, 1057 South Western Ave., Los Angeles 6, California;

La Loma Apartment Hotel, 251 South Olive, Los Angeles 13, California.

By on or about December 18, 1953, petitioner had taken possession of all or [117] substantially all of the real and personal property constituting the former Richman Trust, including the books of account, records, documents, cancelled checks, bank statements, correspondence and files pertaining to said former Trust. Attached hereto as Schedule A and made a part hereof is a list of all the known assets and properties which, according to petitioner's best information and belief, constituted a part of the former Richman Trust and over which petitioner assumed possession, custody and/or control.

4. On February 26, 1954, by order of this Court duly signed and filed, petitioner was relieved of his active duties of management, control, and possession of the assets of the former Richman Trust as of the hour of 5:00 o'clock p.m. on February 28, 1954, and he and his agents and employees were directed to give over possession and control to plaintiff Lyda Tidwell of all said assets, excepting only money in bank and under petitioner's control. Pursuant to the terms of said order petitioner has duly surrendered possession and control to plaintiff Lyda Tidwell of all said assets, except for said money in bank which is still under his control.

5. Petitioner's operations with reference to the assets and properties of the former Richman Trust, and the services which have been necessarily rendered and performed by him or his agents in carrying on the normal business and affairs of said for-

mer Trust and matters incidental thereto, from and after December 1, 1953, to and including February 28, 1954, may be summarized as follows:

December 1953

Arranged for the bank account of the former Richman Trust at the Union Bank & Trust Co. of Los Angeles to be transferred to an account in the name of Roy E. Hallberg, as Receiver of the Assets of the Former Richman Trust.

Hired Roy Harrison, a practical accountant formerly employed by Frederick I. Richman, as a full time bookkeeper at a salary of \$475 per month. Harrison was employed because of his familiarity with the assets and properties of the former Richman Trust, the routine operations incident to their management, and the method of accounting used in [118] connection therewith.

Petitioner and his agents began collecting rents from the five apartment houses owned by said former Trust and deposited the same in the above mentioned bank account. This duty has been continuously and regularly performed over the period of time above mentioned. In this connection petitioner or his agents visited each apartment building at least three times a week and if any rents were on hand they were picked up in order that no substantial amount might be allowed to remain at the building. Furthermore, on the occasion of each such visit vacancies were checked in the particular apartment building.

Delivered supplies from one apartment house to another or from a supplier to an apartment house

throughout December 1953, and January and February 1954.

Renewed a blanket policy of compensation insurance on all five apartment houses.

Paid first installment of 1954 County taxes.

Arranged for transfer of the current files of the former Richman Trust to a low-rent bachelor apartment at the Oliver Cromwell where petitioner set up offices for administration of the receivership.

Inspected the various apartment houses and the vacant apartments therein, paying particular attention to the condition of the physical plant, including the boilers, refrigeration system, water heaters, basements, etc.

Supervised the refurbishing of draperies, arranged for painting and carpeting of one apartment, ordered linens, checked for fire damage, and ordered curtains, all at the Fountain Manor; ordered belts for the refrigerator system, arranged for repainting in several apartments, patched the carpet in one apartment, cleaned chairs, and ordered linens, all at the Western Arms; and arranged for a Christmas tree to be placed in the lobby of each of the five apartment houses.

Through his counsel, the Receiver petitioned this Court for authority to pay Christmas bonuses to employees at all five apartment [119] houses, which said authority was granted by order of this Court, after which bonus checks were prepared and distributed.

Began negotiations with Liberty Mutual Insurance Company and with Robert H. Dulley Co. for

rates on renewal of fire insurance policies soon expiring on the Oliver Cromwell and the La Loma. Subsequently ordered a three year fire insurance policy for the Oliver Cromwell from Liberty Mutual because of a discount of 10% on the standard rate plus a 20-25% dividend at the expiration of the policy.

Inspected poor tile conditions in various individual apartments at the Western Arms and called for bids to correct the worst of said conditions.

Established a bank account at the Third and Western Branch of the Citizens National Trust & Savings Bank of Los Angeles, this being a more convenient place for deposit of rents.

Made plans for revision of the accounting system for the year 1954 in order that full information regarding the operation of each apartment house would be available.

Reviewed contracts with Air Pollution Control, Inc. made by Richman together with other records re installation of smog control devices in the incinerators at the Oliver Cromwell and the Canterbury.

January 1954

Supervised repainting of the La Loma lobby.

Through his counsel, the Receiver petitioned this Court for authority to renovate individual apartments in the five apartment houses, which said authority was granted by court order.

Accompanied the appraisers designated by attorneys for Mrs. Tidwell on their tour of inspection of four apartment houses.

Obtained bids on painting of individual apartments.

Examined vacant apartments at Fountain Manor with particular attention to conditions needing repair and rehabilitation.

Appeared and testified in court re petition for authority to renovate individual apartments. [120]

Conferred with upholsterer.

Selected linens and purchased stove at Barker Bros.

Distributed payroll checks.

Obtained bids for painting at Fountain Manor and La Loma.

Purchased lamps for Oliver Cromwell and purchased draperies for Western Arms, Oliver Cromwell, and Fountain Manor.

Supervised painting of two apartments at Western Arms and two apartments at Fountain Manor.

Conferred with Camusi re method of capitalizing expenses.

Inspected and reinspected painting at Western Arms.

Inspected ceilings at La Loma.

Surveyed area surrounding Western Arms to determine comparative rents.

Conferred with Whyte (Receiver's attorney) re Receiver's report to this Court.

Purchased plastic tablecloths for La Loma.

Obtained bids for power lines at Oliver Cromwell.

Conferred with plumber re water lines at Fountain Manor.

Visited Air Pollution Control District's office and

conferred with Mr. Tow re criminal citation issued because of smoke coming from incinerator at Oliver Cromwell.

Inspected parapet at Canterbury and discussed with contractor problem of removing part of said parapet as required by City of Los Angeles ordinance.

February 1954

Conferred with Air Pollution Control, Inc. re installation of smog control equipment in incinerator at Oliver Cromwell.

Numerous telephone calls to Mr. Tow at Air Pollution Control District re above mentioned criminal citation.

Conferred with Mr. Peckham at Building Department of City of Los Angeles re removal of part of the parapet at the Canterbury; also conferred with contractor re same matter. [121]

Purchased ceiling fixtures at Sears Roebuck.

Conferred with employees of Director of Internal Revenue re tax status of former Richman Trust and assisted bookkeeper in preparation of tax return.

Selected upholstery materials for Western Arms and selected carpeting at Barker Bros.

Arranged for painting at La Loma and inspected the same.

Conferred with Gordon Larson, Director of Smog Control, re dismissal of above mentioned criminal citation.

Conferred with Mr. Tow of the Air Pollution Control District and a Deputy City Attorney re dis-

missal of complaint charging violation of California Health and Safety Code sections by reason of smoke issuing from incinerator at Oliver Cromwell—complaint dismissed.

Talked with Air Pollution Control, Inc. about prompt installation of smog control incinerator equipment at Canterbury.

Supervised painting at Fountain Manor.

Ordered linens and purchased bath rugs for La Loma.

Terminated employment of Harrison, the bookkeeper, and helped him balance his books.

Hired new bookkeeper, Mrs. Jean Findeisen, at a salary of \$300.00 a month and assisted her in learning bookkeeping routine.

Investigated and prepared claim for workmen's compensation insurance for manager of Oliver Cromwell and claim for public liability insurance for guest at Oliver Cromwell.

Inspected apartments at Oliver Cromwell for rain damage following severe storm.

Conferred with contractor re parapet removal at Canterbury and need for caulking at Oliver Cromwell following heavy rain.

Supervised major repair of refrigerator equipment at Western Arms, conferred with various refrigeration maintenance men, and selected new concern to give refrigeration service.

Purchased draperies for Fountain Manor and helped hang them. [122]

Purchased awning and lamps and ordered linens for Fountain Manor.

Conferred with plumber re repairing water lines at Fountain Manor.

Prepared and filed fiduciary income tax return.

6. Attached hereto as Schedule B and made a part hereof is a schedule of the receipts and disbursements of the Receiver for the period commencing December 1, 1953, to and including February 28, 1954. Attached hereto as Schedule C and made a part hereof is a schedule of the disbursements made by the Receiver as directed by the Court covering liabilities incurred prior to February 28, 1954, but not paid until after that date. Also attached hereto as Schedule D and made a part hereof is a list of all the known creditors of the former Richman Trust, with names, addresses, and amounts of claims, including both specific and contingent claims, as of the close of business on March 10, 1954.

7. Petitioner desires to make the following further representations to this Court concerning his operation of the assets and properties of the former Richman Trust:

During the three months in which petitioner has managed the five apartment buildings constituting the major portion of the assets of the former Richman Trust, his first consideration has been to keep the occupancy factor high. This has been accomplished to a satisfactory degree. Renovations and improvements have been made in individual apartments only as such apartments became vacant and when, in the opinion of petitioner, it became necessary to perform such work. This limited program of renovation has been performed consistently with

the representations made in the Receiver's petition to renovate individual apartments approved by order of this Court on January 15, 1954. Furthermore, only limited renovation was possible because of the fact that the cash position in the receivership has never been too strong.

The cash balance as of December 1, 1953, that being the time petitioner assumed his duties as Receiver, was \$5,990.30. As of that [123] date a premium of \$3,827.66 on a liability insurance policy was due; there were accrued bills from November, 1953, amounting to \$6,943.91; and there were taxes of \$17,860.97 to pay on December 10, 1953. This somewhat tight cash position has continued principally on account of the following substantial contingent liabilities, to wit: Contracts with Air Pollution Control, Inc., for installation of smog control equipment in the incinerators at the Canterbury and the Oliver Cromwell in the sum of \$2,658.80; a potential expenditure of \$3400 for removal of a portion of the parapet at the Canterbury to conform with a new ordinance of the City of Los Angeles; new fire insurance policies on the Oliver Cromwell and the La Loma amounting to \$1,835.46 and \$558.38, respectively; and a second installment of real estate taxes due April 10, 1954, in the sum of \$14,858.31. Accordingly, it has been necessary for petitioner to proceed cautiously with any program of renovation. In this connection, whereas approximately 11% of all the apartments at the Fountain Manor have been painted during petitioner's regime as Receiver, this percentage has been scaled down

materially in the other apartment buildings and at the Canterbury there has been no painting during the period of the receivership.

Because a great deal of the petitioner's time was involved in analyzing and appraising the condition of the five apartment houses, he feels that some of their salient factors as he has observed them should be set out in this report as follows:

Canterbury: The physical condition of this apartment building and its furnishings is the best of the five apartment houses. Largely because of the personal following and the activity of the manager, Mrs. Gregg, there have been relatively few vacancies. The demand for apartments generally is expected to drop off a bit by April 1954, at which time petitioner had planned to paint approximately six individual apartments in this house.

Air Pollution Control, Inc. has just completed installation of an Oxy-Aire unit in the Canterbury incinerator, which is awaiting approval of the Air Pollution Control District. [124]

During the Spring of 1953, after Mr. Richman had signed a contract for parapet correction to safeguard against potential earthquake damage, the Los Angeles City Council amended the parapet section of the Los Angeles City Building Code. The Department of Building and Safety then stated that its standard Sketch A should be used. This necessitated a revised bid which amounted to \$4420. Petitioner's agent went to the City Hall and talked with Mr. Peckham in the Department of Building and Safety who agreed to inspect the building again to

determine if the parapet above the entrance court might be allowed to remain. Following the inspection the bid price was reduced as of February 4, 1954, to \$3418. Petitioner has not yet signed a contract for parapet removal because it seems desirable to postpone this work until after the peak of the winter season has passed.

Fountain Manor: This building has the weakest physical plant of the five apartment houses. Moreover, it is located in a fringe area. The unit heaters in all of its apartments are non-vented, a source of potential trouble should restrictive legislation be enacted. A large majority of the apartments need painting, carpeting and other refurbishing. Even under petitioner's necessarily limited program of upgrading, he has deemed it essential to paint over 11% of these apartments and within two days after he was relieved of his active duties of management on February 28, 1954, several apartments were vacated which need renovating.

The plumbing situation is particularly bad. Electrolysis is taking place between some of the copper joints and the cast iron pipes. The copper joints have been used in making some emergency repairs and leaks are continually occurring at the joints and in the remaining cast iron pipe which is corroding. Due to the fact that the return hot water pipes are located in the confined area between a false fourth floor ceiling and the roof, it is practically impossible for workmen to take the necessary corrective steps and there is continual danger of breaking through plaster into the room below. Peti-

tioner's rough estimate of the cost of necessary work to correct that portion of the plumbing system which is presently giving trouble is \$3500. [125]

La Loma: Physically this building is badly run down. Although the rental rates are low, the Bunker Hill area is developing many vacancies. It has been necessary for petitioner to do some painting in various individual apartments but much more is called for. It has also been necessary to paint the lobby. Obviously, the relatively low rental rates do not allow for extensive renovation.

Oliver Cromwell: It is interesting to note that although four of the five apartment houses belonging to the former Richman Trust have rental rates which are from 4% to 15% above those of neighboring apartment buildings, the Oliver Cromwell, whose rates on an average are lower than those of nearby apartment buildings, has the best location of the five apartment houses in the former Trust. Accordingly, it seems to petitioner that after some renovation the rates at this apartment building should be increased. Had the receivership continued, it was petitioner's intention to upgrade various individual apartments if and when vacancies occurred. However, lamps and draperies have been purchased for this building. Some of the furnishings thus replaced were taken to the other buildings.

Air Pollution Control, Inc. has just completed installation of an Oxy-Aire unit in the incinerator which has yet to be approved by the Air Pollution Control District.

Petitioner is of the opinion that the concrete at

the rear of this building has never had water-proofing and the caulking around the windows has badly deteriorated. This should be done as well as a complete paint job on the trim of the building. The caulking around the window frames is dried up, cracked, and broken out. Glass in many of the windows is loose and needs reputtying. During the recent heavy rain storm water entered around the window frames and spoiled some relatively well-painted surfaces. Damage was particularly noticeable on the east side of the building and upon survey it became apparent to petitioner that some corrective work was urgent. Several bids were obtained amounting on an average of about \$650 covering painting [126] and caulking and trim on the east side of the building only. Of course, the whole building needs this treatment.

When the fire insurance policy on the Oliver Cromwell expired January 1, 1954, petitioner placed the new policy with Liberty Mutual at an original cost of 10% under standard rates. Furthermore, Liberty Mutual has paid a dividend of at least 25% on its fire policies since 1908. Fire insurance policies on the other apartment houses were not cancelled despite this potential saving because such cancellation would have involved short term rates for the period in force or a loss for the property owner.

Western Arms: This building is definitely located in a fringe area because of the large colored population in the neighborhood. It has been necessary to paint approximately 11% of the apartments.

Much more painting and refurbishing ought to be done. What lamps were needed were brought from the Oliver Cromwell. Petitioner has been reluctant to spend large sums in this building in view of the questionable desirability of retaining it as a part of the assets of the former Richman Trust. Even in the event that there should be extensive renovation in this building, it is the opinion of petitioner that largely because of its location the income derived therefrom would be particularly vulnerable should there be an economic down-trend.

8. With respect to the amount of the fee which should be allowed to petitioner for his services as Receiver herein, petitioner prefers to leave this matter to the judgment and discretion of this Court. In this connection petitioner is informed and believes and therefore alleges that the customary and usual fee for property management in the Los Angeles area is 5% of gross income.* Petitioner further alleges [127] that defendant Frederick I. Richman, who administered the assets and properties of the former Richman Trust prior to December 1, 1953, received approximately 10% of the Trust's gross income as his management fee, plus attorney's

*5% of the gross income figure of \$94,153.59 shown on Schedule B attached hereto is not equivalent to 5% of gross income during the entire three months period of the active receivership, namely, December 1953, and January and February 1954, for the reason that a representative of plaintiff Tidwell collected cash receipts from some or all of the five apartment houses for February 26, 27 and 28, 1954, amounting to approximately \$2,000.

fees for special work performed by him as an attorney. Petitioner also respectfully calls the Court's attention to the fact that his duties as Receiver herein were relatively more burdensome than they would have been had the receivership continued for a longer period of time on a normal well-oiled day-to-day basis in that heavy duties were imposed upon him as a Receiver by reason of his taking possession of unknown assets and familiarizing himself with them, the setting up of his books, the installing of his system of management, and then, only three months later, the necessity for closing up the books and surrendering possession of the assets. It also should be pointed out that when the Receiver took office, he was faced with the task of modernizing and renovating numerous individual apartments which had fallen into a state of obsolescence and disrepair under said Richman's administration.

Petitioner is further informed and believes and therefore alleges that said Frederick I. Richman had a contract to manage the assets of the former Richman Trust for so long as both of the beneficiaries thereof, viz., himself and his sister, Mrs. Tidwell, might live; whereas not only has petitioner's tenure as Receiver herein been in fact limited to a brief three months' period, but it was obvious at the time that the Receiver was appointed that his term of office would be relatively short. For the reasons mentioned above it seems to the Receiver that the compensation to be awarded him and his attorneys should be in excess of that which this Court would allow a receiver and his attorneys

for a three months' period of service in the case of a normal long-term receivership.

9. Petitioner further represents to this Court that his counsel, Messrs. FitzPatrick & Whyte and John Whyte, have rendered necessary and valuable services to him in connection with his administration of the affairs of the former Richman Trust and matters incidental thereto for which they should be adequately compensated, the nature and extent of said services being more particularly set forth in the petition for allowance of fees to attorneys for Receiver, filed concurrently herewith.

Wherefore, Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, prays:

1. That his first and final report to this Court as hereinabove set forth, including the schedules attached hereto and made a part hereof, be approved;
2. That this Court make and enter its order fixing and allowing a reasonable fee to the Receiver herein for the services heretofore necessarily rendered and performed by him in carrying on the normal business and affairs of the former Richman Trust and matters incidental thereto from and after December 1, 1953, to and including February 28, 1954, and that said order authorize and direct immediate payment of said sum so fixed by said Court to the Receiver from funds on deposit in the Third and Western Branch of the Citizens National Trust and Savings Bank of Los Angeles to the account

of Roy E. Hallberg, as Receiver of the Assets of the former Richman Trust;

3. That after payment to the Receiver of such reasonable fee as may be fixed by this Court and after payment to the attorneys for the Receiver of a reasonable attorneys' fee to be fixed by this Court, this Court make and enter an appropriate order relieving the Receiver of all further control over and responsibility for all moneys in bank belonging to the former Richman Trust and relieving and exonerating the Receiver from all responsibilities in any way connected with or arising out of the administration of the assets of the former Richman Trust;

4. For such other, further or different relief as may be just and proper.

Dated: March 18, 1954.

/s/ ROY E. HALLBERG,

Receiver

[129]

SCHEDULE A

Inventory of all known assets and properties constituting a part of the former Richman Trust over which the Receiver assumed possession, custody, and/or control.

1. The Canterbury Apartment Hotel, at 1740 North Cherokee Avenue, Hollywood. Including Grant Deed recorded in Book 28420, Page 223. Bill of Sale from Frank Bursinger. Title Insurance & Trust Policy 2924463. Combination of office safe. Niagara Fire Insurance Policy No. 55024, which

Schedule A—(Continued)

also covers the Fountain Manor Apartments and the Fountain Manor Garage.

2. The Fountain Manor Apartments, at 5165 Fountain Avenue, Los Angeles. Including Grant Deed recorded in Book 20614, Page 28. Title Insurance Policy No. 1736449. Survey of Apartment and Garage Buildings. Unrecorded Release of Chattel Mortgage, dated January 10, 1947, by John Hancock Life Insurance Company. Also cancellation of Assignment of Rents. Unrecorded bill of Sale covering furniture. Lease covering garage, together with Assignment of Lease of Richman Trust to Zane Green to Herschel E. Watson.

3. La Loma Apartments, at 251 South Olive, Los Angeles. Including Grant Deed recorded in Book 30131, page 213, Bill of Sale. Title Insurance Policy No. 3028784. Grant of Telephone Right-of-Way. Combination of safe. Liberty Mutual Fire Insurance Policy FC-64B 107480.

4. Oliver Cromwell Apartments, at 418 South Normandie, Los Angeles. Including Title Insurance Policy No. 3292694. Deed recorded in Book 34193, Page 133. Letter from Pacific Mortgage Corporation, dated September 6, 1950. Bill of Sale. Letter from Mutual Benefit Life Insurance Co., dated October 10, 1950. Combination of safe. Certificate of Insurance, Lloyd's No. 42787—Earthquake Policy. Certificate of Insurance, Liberty Mutual, No. FG 64 107389—Fire and Extended Coverage.

5. Western Arms Apartment Hotel, at 1057 South Western, Los Angeles. Including Title Guar-

Schedule A—(Continued)

antee Policy No. 1251512-A. Grant Deeds recorded in Book 18405, Page 150; 18405, Page 151; 18405, Page 146. Bill of Sale. Unrecorded Release of Chattel Mortgage. Second Bill of Sale.

6. Chowchilla Acres, containing Madera Abstract Co. Abstract No. 2666. Security Title Insurance Policy No. 20568. Deeds recorded Dec. 31, 1936, January 21, 1948, October 5, 1949, and March 2, 1951. [130]

7. Colorado Land Oil Royalty, containing unrecorded quitclaim Deed executed November 24, 1938.

8. Kern County Acres. Including Deeds recorded May 7, 1935; February 13, 1937. Telephone Right-of-Way Grant. Letter and Plat from County Surveyor, dated December 27, 1944.

9. San Bernadino Acres. Including Deeds recorded in Book 267, Page 377, and in Book 1187, Page 243, San Bernadino County. Consolidated Title Insurance Policy 82994. Survey.

10. W. T. Brookshire, Loan, containing Trust Deed and Chattel Mortgage dated December 9, 1946, recorded December 21, 1946 in Book 1996, Page 215, Official Records of San Bernadino County, together with note for \$5,000.00. Pioneer Title Insurance Policy 174745. Certificate for one (1) share Crestline Village Mutual Service Company No. 1572CV. Phoenix Assurance Co. Policy No. 837158 for \$9,500.00, expiring July 30, 1956. Four (4) Assignments of Deed of Trust.

11. Kenneth Finch, Promissory Note dated August 4, 1947 for \$800.00, plus miscellaneous papers.

Schedule A—(Continued)

12. Associated Gas & Electric Co. containing five (5) certificates for fifteen (15) shares Class "A" stock in the name of F. H. Richman, all endorsed with signature guaranteed, all dated in 1930 and 1931.

13. Nevada State Gold Mines Certificate 739 for 382 shares Second Preferred. Certificate 2361 for 1,047 1/5 shares Common stock, and correspondence.

14. Southwest Oil and Development — Correspondence.

15. Insurance Policies: Associated Indemnity Corporation—Standard Workmen's Compensation and Employers' Liability Policy No. C 48-0912, and American Indemnity Company's Comprehensive Liability Policy No. CL 13828.

And—All books of account, records, documents, cancelled checks, bank statements, correspondence, and files pertaining to the former Richman Trust as more particularly hereinafter set forth:

1. Information Returns.
2. Richman Trust Payroll.
3. Fire Insurance.
4. Withholding Returns.
5. Nagel-Richman Compensation Insurance.
6. Unemployment Correspondence.
7. Social Security.
8. Unemployment Returns.
9. Unemployment Statement of Charges.
10. Nagel-Richman Public Liability Insurance.
11. Canterbury—Dry Cleaning.
12. Canterbury—Incinerator.

Schedule A—(Continued)

13. Canterbury—Monthly Reports.
14. Canterbury—Laundry.
15. Canterbury—Milk.
16. Canterbury—Telephone.
17. Canterbury—Paid Bill File—January 1, 1953 to December 31, 1953.
18. Canterbury—Paid Bill File—January 1, 1954 to
19. Canterbury—Rent Receipts.
20. Canterbury—General.
21. Colorado Oil Royalty.
22. Fountain Manor—Telephone.
23. Fountain Manor—Laundry.
24. Fountain Manor—Paid Bill File—August 1, 1953 to December 31, 1953.
25. Fountain Manor—Paid Bill File—January 1, 1954 to
26. Fountain Manor—Transient Correspondence.
27. Fountain Manor—General.
28. Fountain Manor—Rent Receipts.
29. Fountain Manor—Monthly Reports.
30. La Loma—Rent Receipts.
31. La Loma—Paid Bill File—July 1, 1953 to December 31, 1953.
32. La Loma—Paid Bill File—January 1, 1954 to
33. La Loma—Monthly Reports.
34. La Loma—Laundry.
35. Madera & Kern County Oil Rights.
36. Oliver Cromwell—Incinerator.
37. Oliver Cromwell—Dry Cleaning. [132]
38. Oliver Cromwell—Telephone.

Schedule A—(Continued)

39. Oliver Cromwell—General.
40. Oliver Cromwell—Paid Bill File—July 1, 1953 to Dec. 31, 1953.
41. Oliver Cromwell—Paid Bill File—January 1, 1954 to
42. Oliver Cromwell—Rent Receipts.
43. Oliver Cromwell—Monthly Reports.
44. Oliver Cromwell—Laundry.
45. Nagel-Richman—San Bernadino Acres (also includes Orange County Lots and San Clemente Lot.)
46. Western Arms—Rent Receipts.
47. Western Arms—Smog.
48. Western Arms—General.
49. Western Arms—Monthly Reports.
50. Western Arms—Laundry.
51. Western Arms—Paid Bill File—January 1, 1953 to December 31, 1953.
52. Western Arms—Paid Bill File—January 1, 1954 to
53. Richman Trust Workpapers—Jan. 31, 1950 to Nov. 30, 1953.
54. Richman Trust Tax Returns for Years 1946-1953.
 - General Ledger Book to December 31, 1953.
 - Current Ledger Book.
 - Cash Receipts and Disbursements Book to Dec. 31, 1953.
 - Journal.

Schedule A—(Continued)

Cash Receipts and Disbursements Book from January 1, 1954 to

Payroll Record Book.

1953 Payroll Terminations Book.

And the following records of properties of the Old Richman Trust and properties formerly belonging to Nagel-Richman:

1. Carton No. 1: containing the following tabbed files:

Old Richman Trust—General.

Old Richman Trust—Burbank Corner.

Old Richman Trust—Linden Court.

Old Richman Trust—Ponce de Leon Apartments. [133]

Old Richman Trust—Surfline.

Old Richman Trust—Tremaine Property.

Nagel-Richman—Insurance.

Nagel-Richman—Plate Glass Insurance.

Rent Control Law.

Correspondence re Rent Control.

Rent Control Petitions.

Rent Control.

Nagel-Richman—Atlantic and Compton Acres and Lewis Lot.

Nagel-Richman—Beanhouse and Bean & Dogleville.

Nagel-Richman—Bellhurst Park. Bescondy and La Canada.

Burbank Corner.

Burbank Ervin.

Richman Trust—Burbank Ervin.

Richman Trust—Burbank Motor Parts.

Schedule A—(Continued)

Nagel-Richman—Burbank San Jose.

Casa Loma Court.

Casa Loma Rent Statements.

Casa Loma Court—Paid Bills 3/31/43.

Casa Loma Court—Paid Bills April 1, 1943.

Nagel-Richman—Chowchilla Acres.

Coronet Apartments.

Coronet Telephone & Telegraph Bills.

Coronet Laundry Bills.

Coronet Paid Bills — March, 1943 to January, 1944.

Nagel-Richman Culver City Lots.

2. Carton No. 2: containing the following tabbed files:

Nagel-Richman El Cajon Ranch.

Fletcher Apartments—Legal.

Fletcher Apartments.

Fletcher Apartments.

Fletcher Apartments.

Fletcher Apartments—Rent Statements.

Five (5) Fletcher Apartments Paid Bill Files from November, 1941 to October, 1950.

Nagel-Richman—Imperial Acres.

Nagel-Richman—Inglewood Building.

Nagel-Richman—Jackson Farm.

Jackson Farm.

Nagel-Richman—Jones Farm.

Jones Farm.

Nagel-Richman—Kern County Acres.

Los Angeles Housing Problem.

Schedule A—(Continued)

R-T Melrose Building.

Modern Machine Works.

3. Carton No. 3: containing the following tabbed files:

Ojai Apartments—Three (3) Paid Bill Files from September, 1941 to May, 1944.

Ojai Apartments.

Nagel-Richman—Olympic Boulevard Lot.

Nagel-Richman—Paden and Pierson Lots.

Nagel-Richman—Portland Acres.

Nagel-Richman—Powers Place.

Nagel-Richman—Sixty Acres.

Nagel-Richman—Spokane Lots.

R-T—Stolper Electric Financial Statements.

Nagel-Richman—Long Beach Triangle.

Strand Lot.

Villa Carlotta—OPA.

Villa-Carlotta—Laundry bills.

Villa Carlotta—Telephone Bills.

Villa Carlotta—Monthly Reports.

Nagel-Richman—Villa Carlotta.

Villa Carlotta—Four (4) Paid Bill Files from Nov. 1944 to Mar., 1948.

4. Carton No. 4: containing the following tabbed files:

Western Arms Apartments.

Western Arms—Laundry bills. [135]

Woods vs. Richman.

Western Arms—Rent statements.

Western Arms Paid Bills Files from May, 1941 to Dec. 31, 1952.

Schedule A—(Continued)

5. Carton No. 5—containing the following tabbed files:
Fountain Manor—OPA.
Fountain Manor.
Fountain Manor.
Stanley vs. Richman.
Fountain Manor—Laundry Bills.
Fountain Manor—Telephone.
Fountain Manor Apartment Hotel—General.
6. Carton No. 6—containing the following tabbed files:
Fountain Manor Paid Bill Files from January, 1944 to July, 1953.
7. Carton No. 7—containing the following tabbed files:
Canterbury Apartment Hotel Paid Bills Files from October, 1948 to December 31, 1952.
8. Carton No. 8—containing the following tabbed files:
Oliver Cromwell Paid Bills Files from August, 1950 to June 30, 1953.
La Loma Paid Bill Files from May, 1949 to June 30, 1953.
9. Carton No. 9—containing the following:
Check Stubs from January 1, 1946 to September 30, 1953.
10. Carton No. 10—containing the following:
Richman Trust Cancelled Checks and Bank Statements from January, 1946 to December, 1950.

Schedule A—(Continued)

11. Carton No. 11—containing the following:
Richman Trust Cancelled Checks—January, 1951 to October, 1953, including Bank Statements.
12. Transfer Ledger containing Cash Receipts and Disbursements from January, 1941 to December, 1952.
13. Transfer Ledger containing old General Ledger Account sheets. [136]
14. Two Stationery Boxes containing Individual Wage Earner Records, and post-office returned W-2 Forms.
15. Two Stationery Boxes containing Time Sheets for calendar year 1952 and for January, 1953, through December, 1953.
16. Oliver Cromwell Payment Book, and Pacific Mortgage Company Statements for 1951 and 1952. [137]

SCHEDULE OF RECEIPTS AND DISBURSEMENTS

OF ROY E. HALLBERG, AS RECEIVER OF THE
ASSETS OF THE FORMER RICHMAN TRUST

FROM DECEMBER 1, 1953 TO AND INCLUDING FEBRUARY 28, 1954

	<u>Fountain</u>	<u>La</u>	<u>Oliver</u>	<u>Western</u>	<u>Imprest</u>
	<u>Manor</u>	<u>Loma</u>	<u>Cromwell</u>	<u>Arms</u>	<u>Petty Cash</u>
				<u>Total</u>	<u>Bank</u>
Cash in Bank					\$ 5,990.30
as of 11/30/53					
Imprest Petty					
Cash Funds on					
Hand at Apts.					
as of 11/30/53	\$375.00	\$200.00	\$10.00	\$100.00	\$785.00
Total Cash on					
Hand end in					
Bank as of					
Nov. 30, 1953					\$ 6,775.30

Rent & Misc. Receipts
for the month of
December, 1953 \$9,2

Rent & Misc.		Fountain Canterbury	La Manor	Oliver Cromwell	Western Arms	Other	Total	Petty Cash	Imprest	Bank
<i>Receipts for</i>										
the month of										
January, 1954	\$9,457.73	\$8,021.02	\$2,677.95	\$7,728.29	\$4,931.00	\$61.11	\$32,813.66		\$32,813.66	
<i>Receipts for</i>										
the month of										
February, 1954	8,307.31	6,454.42	2,642.26	7,604.70	4,185.94	321.35	29,515.97		29,515.97	
<i>Total Receipts</i>										
for period from										
Dec. 1953 to										
and including										
Feb. 28, 1954	\$27,035.01	\$21,628.57	\$8,030.70	\$22,989.27	\$14,092.69	\$377.35	\$94,153.59		\$100,143.89	

Receipts for the month of February include those only for twenty five days.

Canterbury	Fountain	La	Oliver	Western	Other	Total	Bank
	Manor	Lome	Cromwell	Arms			
Disbursements for							
expenses and oblig-							
ations incurred by							
F. I. Richman prior							
to commencement of							
Receivership (See	(5.30)	(3.80)	(.92)	(16.35)	(0.45)		
Exhibit I attached)	\$2,008.99	\$1,971.33	\$712.67	\$1,420.12	\$857.62		
	<u>\$2,003.69</u>	<u>\$1,967.53</u>	<u>\$711.75</u>	<u>\$1,403.77</u>	<u>\$857.17</u>		
							<u>\$6,943.91</u>
Disbursements for							
Dec., 1953 Operating,	(250.96)	(239.49)	(62.49)	(247.48)			
Maintenance, and	(5.90)	(1.45)	(68.14)		(126.69)	500.84	\$500.25
Renovation Expense	2,781.00	2,437.08	697.57	2,450.23	1,795.44	(95.67)	2,027.25
(See Exhibit II hereto)							
R. E. Taxes Paid							
in Dec., 1953	<u>4,814.06</u>	<u>4,156.79</u>	<u>1,411.00</u>	<u>4,627.93</u>	<u>2,851.19</u>		<u>33.44</u>
	<u>\$7,338.20</u>	<u>\$6,447.93</u>	<u>\$2,149.51</u>	<u>\$6,902.57</u>	<u>\$4,519.94</u>	<u>\$780.17</u>	<u>\$2,260.94</u>
							<u>\$30,699.26</u>

Disbursements for

expenses and oblig-
ations incurred by

F. I. Richman prior
to commencement of

Receivership (See

Exhibit I attached)

Dec., 1953 Operating,

Maintenance, and

Renovation Expense

(See Exhibit II hereto)

R. E. Taxes Paid

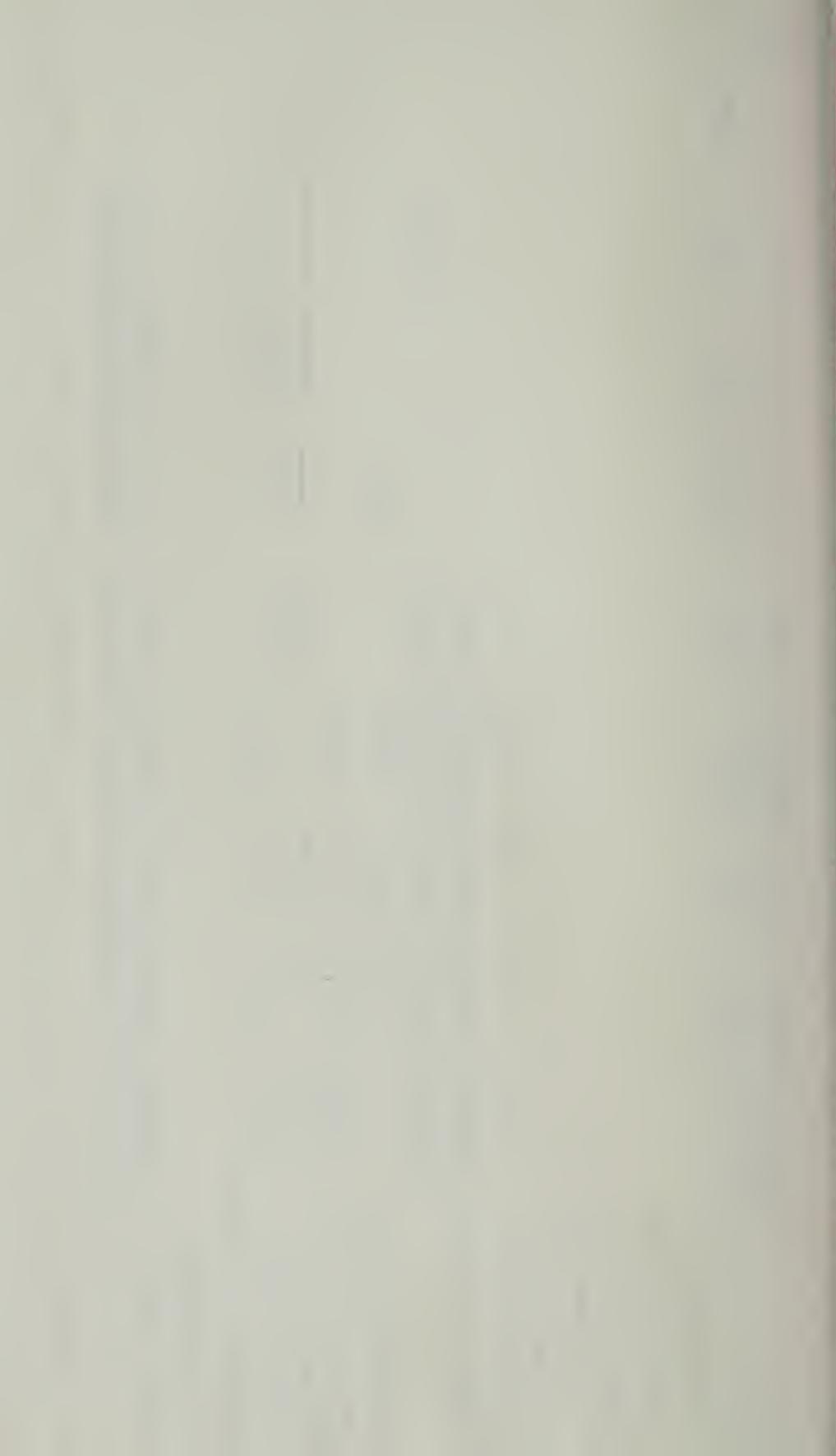
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AYNE P. KELLEY

Computation of Net Income
Net Worth Method

	<u>12/31/48</u>	<u>12/31/49</u>	<u>12/31/50</u>	<u>12/31/51</u>	<u>12/31/52</u>
<u>Assets</u>					
A. Cash on Hand - Schedule F	86.50	11206.36	-0-	7228.64	10349.09
B. Bank Accounts					
1. City Savings Bank a/c #155522	3509.32	3367.14			
2. National Hamilton Bank a/c #6594	3933.93	3973.42			
3. First National Bank of Nevada a/c #10927	85.56	86.83	88.12	88.78	3845.17
4. Security National Bank of Reno a/c #5192	7936.89	8041.51			
5. Home National Bank	226.20	202.40			
6. First National Bank of Nevada-Commercial a/c	155.09	329.95	771.75	10101.67	1105.01
7. Securities - Schedule A	1050.00	1250.00	114807.01	135628.16	165883.34
C. Ultra K Distributing Co.					20000.00
D. Office Equipment - Schedule B	7707.70	7851.95	7920.51	8159.76	8387.76
E. Automobile - Schedule C	2827.00	2827.00	2827.00	6531.00	6531.00
F. Airplane	9500.00	9500.00	9500.00	9500.00	9500.00
G. Airplane Radio				450.00	450.00
H. Residence	25000.00	25000.00	25000.00	25000.00	25000.00
I. Improvements on Residence			703.15	1395.87	395.87
J. Home Furnishings	2624.29	2624.29	2827.91	2907.74	2907.74
K. U. S. Government Bonds	29400.00	31650.00	9787.50	2250.00	2250.00
L. Total Assets	<u>94042.48</u>	<u>107910.85</u>	<u>174232.95</u>	<u>209241.62</u>	<u>257604.98</u>
<u>Liabilities</u>					
I. Net Worth	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
A. Less: Beginning Net Worth					
B. Increase in Net Worth					
C. Add: Expenditures Not Reflected in Net Worth					
1. Federal Income Taxes Paid					
2. Personal Living Expenses - Schedule D					
D. Less: Non Cash Deductions and Non-Taxable Income					
1. Allowable Depreciation - Schedule E					
2. Non Taxable Income					
A. 50% Long Term Capital Gains					
B. Cost of Endowment Policies Cashed					
C. Capital Surplus Distribution - Technical Fund Stock					
D. Income Tax Refund					
E. Adjusted Gross Income Corrected					
F. Less: Personal Deductions					
G. Standard Deduction					
H. Net Income Corrected					
I. Net Income Per Return					
J. Income Understated					
	<u>8911.14</u>	<u>55131.04</u>	<u>9186.06</u>	<u>14963.79</u>	

DISBURSEMENTS FOR EXPENSES AND OBLIGATIONS INCURRED BY F. I. RICHMAN PRIOR TO RECEIVERSHIP

	Total	Canterbury	Fountain Manor	La Lone	Oliver Cromwell	Western Arms
<u>Operational Expenses</u>						
Water, Electric & Power	\$725.72	\$ 130.59	\$213.26	\$ 50.07	\$206.16	\$145.64
Gas	340.55	49.07	152.94	59.11	26.92	52.51
Fuel Oil	321.82	79.58		73.55	168.69	
Elevator Maintenance	72.03	12.50	5.00	20.42	16.95	17.16
Furnace-Oil Burner	289.35	29.85		250.00	9.50	
Refrig. Main. & Repair	63.44	5.00	8.00	36.48	8.96	5.00
Laundry	962.99	273.99	242.04	67.62	241.42	137.92
Curtain & Blank. Cleaners	53.97	35.27	9.63	9.07		
Telephone & Telegraph	572.70	256.28	185.11	8.94	113.54	8.83
Western Union	27.29	9.15	6.14		12.00	
Supplies	368.86	97.25	112.37	23.62	118.01	17.61
<u>General Expenses</u>						
Compensable Exp. for Guests	206.11	153.86			52.25	
Pest Control Service	26.00		7.50	4.50	7.50	6.50
Supplies	14.59	14.59				
Advertising	93.95			47.69		46.26
Stationery & Supplies	12.50				12.50	
Decorating, Repair & "Replace.						
Carpeting	961.40	572.53		185.87		203.00

	<u>Total</u>	<u>Canterbury</u>	<u>Manor</u>	<u>La Loma</u>	<u>Oliver Cromwell</u>	<u>Western Arms</u>
Cleaning (Furn.etc.)	\$ 72.78	\$ 18.00	\$ 39.78	\$ 3.00	\$ 12.00	\$ 5.64
Electrical	9.42	3.78				
Heating & Stoves	123.15	27.84	58.53		6.36	
Linens & Bedding	377.58	26.39	335.08			
Shades & Ven. Blinds	103.97	44.21	59.76			16.11
Painting	550.16	135.85	149.25	30.67	234.39	
Plumbing	137.04	33.41	5.58		45.78	
Furniture Repair	21.58			16.68	4.90	
Upholstering	461.78		135.30	78.94	134.79	112.72
	\$6,970.73	\$2,008.99	\$1,971.33	\$712.67	\$1,420.12	\$857.62
Less Discounts	26.82	5.30	3.80	.92	16.32	.42
TOTAL AS PER SCHEDULE B	\$6,943.91	\$2,003.69	\$1,967.53	\$711.75	\$1,403.77	\$857.17

DISBURSEMENTS FOR DECEMBER, 1953, EXPENSES OF OPERATION, MAINTENANCE, AND RENOVATION

	Total	Canterbury	Fountain	Laurel	Oliver	Cromwell	Western	Office	Other
					Manor	Loma			
<u>Operational Expenses</u>									
Water, Electric & P.	\$ 477.71	\$ 114.42	\$ 106.96	\$ 120.31		\$ 62.99			\$ 73.03
Gas	253.61	32.71	46.72	6.57		107.67			59.94
Fuel Oil	402.79	162.66	--	79.58		89.11			71.44
Elevator Maintenance	121.60	18.55	36.29	6.00		32.03			28.73
Furnace-Oil Burner	10.50					5.50			5.00
Refrig. Main.& Repair	91.72	21.25	28.35	4.15		5.00			32.97
Laundry-Curtail & Blan.	103.37	49.29	37.77	9.78		6.53			
Telephone & Telegraph	263.04	49.55	57.77	1.50		148.35			5.89
Western Union	14.03	6.67	1.89			5.47			
Supplies	246.29	24.79	36.92			37.94			116.04
Petty Cash Expend.	498.79	215.37	87.97	11.57		68.14			92.75
<u>General Expenses</u>									
Compensable Ex.-Guests	71.48	30.08				40.80			
Pest Control Service	26.00			7.50	4.50	7.50			6.50
Gardener	65.00			45.00					20.00
Other Supplies	24.06			24.06					
Salaries & Wages	6,212.51	1,640.25	1,554.36	320.00	1,610.28				450.00
Christmas Bonus	515.00	155.00	75.00	35.00	145.00				25.00

Administrative Expense

Decorations, Repairs & Rep.

Receiver's Bona	375.00					
Stationery	2.85					
<u>Decorations, Repairs & Red.</u>						
Carpeting	115.74					
Cleaning	38.98					
Electrical	177.21	155.97	2.50	9.75	6.49	2.50
Heating & Stoves	52.12		30.07			22.05
Shades & Ven. Blinds	68.88		50.79			18.09
Painting	759.50		170.00	174.00	7.50	408.00
Plumbing	215.42	73.84	16.87	18.29	87.87	18.55
Furnishings	76.31		76.31			
Misc.		12.05				12.05
<u>Other-Refund to Guest</u>		3.75				3.75
<u>MTge. Payment- Interest</u>						638.16
Principal	1,389.09					

Director of Internal

	Total	Canterbury	Fountain	La	Oliver	Western	Office	Other	
Revenue	\$ 500.25								\$200.25
Less Discounts	20.93	\$ 5.90	\$ 1.45						
	\$12,804.85	\$2,524.14	\$2,291.14	\$738.51	\$2,274.64	\$1,668.75	\$780.17	\$2,527.50	
Real Estate Taxes									
Paid 12/10/53	17,894.41	4,814.06	4,156.79	1,411.00	4,627.93	2,851.19			\$3,44

TOTAL DECEMBER, 1953,
DISBURSEMENTS AS PER
SCHEDULE B

Total	Canterbury	Rountain	La	Oliver	Western	Office	Other
		Manor	Loma	Cromwell	Arms		
Linens & Lccile	\$282.62		\$195.62	\$87.00			
Plumbing	450.00				\$450.00		
Furn.-mattress	224.71	\$24.06	48.85	61.00	72.95	\$17.85	
Upholstering	432.04	206.54	112.75				112.75
Other							
3 Yr. Fire Insurance					1,835.46		
Licenses	11.00		10.00	1.00			
Liability Ins. Prem.						\$3,427.66	
Workmens Comp. Deposit						400.00	
Mtge. Payment-Interest						632.95	
Principal						1,394.30	
Compensatory Expenses						120.37	
Div. of Internal Rev.						212.59	
Federal Unemploy.						744.52	
With. & F.O.A.B.							
St. Dept. or Employ.							627.26
Less Discounts	2.33		.62	.61		1.10	
Total Jan. Disburse.							
as per Schedule B	\$21,375.63	\$2,695.80	\$3,300.28	\$871.08	\$4,888.57	\$1,592.70	\$439.88
							\$7,589.65

*Office petty cash Office supplies. 3.55 ; EW- 446.62; Western A.-18.66

DISBURSEMENTS FOR JAN., 1954 OPERATING, MAINTENANCE, & RENOVATION EXPENSE

	Total	Canterbury	Mountain	La	Oliver	Western	Office	Other
			Manor	Loma	Cromwell	Arms		
<u>Operational Expenses</u>								
Water, Electric & P.	\$1,261.18	\$ 260.43	\$312.61	\$159.04	\$305.04	\$219.86		
Gas	646.98	89.39	207.45	63.47	152.02	134.65		
Launary	1,200.35	335.78	306.14	87.87	293.82	176.74		
Tel. & Tel.	865.86	288.31	294.93	12.71	260.14	9.77		
Petty Cash	454.26	130.37	141.34	10.08	50.60	157.04	\$58.85*	
<u>General Expense</u>								
Gardener	65.00		45.00		20.00			
Salaries & Wages	5,754.87	1,564.50	1,352.05	320.00	1535.26	533.06	450.00	
Social Security	(115.16)							
S.U.I.	(57.65)							
Income T. Withheld	(379.45)	(209.58)	(206.68)	(53.62)	(200.10)	(104.78)	(84.20)	
Employees' Rent	(307.00)							
Office Stationery							150.50	
<u>Decorating, Repairs & Repl.</u>								
Carpeting		9.00		9.00				
Painting		760.00		425.00	80.00		255.00	
Cleaning		--						
Electrical		11.33						
Heating & Stoves		116.96		30.68	30.60		55.08	
Draperies		150.40		12.54			112.78	25.08

DISBURSEMENTS FOR FEBRUARY, 1954, EXPENSES OF OPERATION, MAINTENANCE, AND RENOVATION

<u>Operational Expenses</u>	<u>Total</u>	<u>Canterbury</u>	<u>Manor</u>	<u>Loma</u>	<u>Cromwell</u>	<u>Arms</u>	<u>Orifice</u>	<u>Other</u>
	Fountain	La	Oliver	Western				
Water, Electric & Power	\$1,020.97	\$ 239.68	\$ 294.97		\$ 270.30		\$ 216.02	
Gas	265.51		204.42	\$ 61.09				
Fuel Oil	577.10	177.51		75.25	222.49	75.55		
Elevator Maintenance	71.59	30.79	5.00	11.82	17.92	6.00		
Refrigeration	101.54	5.00	61.56	4.00	5.00	22.98		
Laundry	1,156.43	529.40	305.29	88.44	266.31	166.93		
Curtain & Blank.Clean.	37.60	7.32	2.30	3.51	18.84	5.03		
Telephone & Telegraph	20.84		4.03	11.35		5.46		
Western Union	22.81	19.70	3.11					
Supplies	299.51	86.13	48.48		92.32	72.58		
Petty Cash Expenses	406.17	91.18	95.73	18.61	54.81	65.08	\$ 41.80	\$ 38.90
<u>General Expenses</u>								
Compensatory Expense-Guest	188.43	135.33				53.10		
Pest Control Service	26.00		7.20	4.20	7.50	6.50		
Gardener	65.00		45.00		20.00			
Supplies-other	41.25							
Licenses	189.50	52.00	45.50	16.50	46.00	29.50		
Advertising	33.72		33.72					

<u>Total</u>	<u>Canterbury</u>	<u>Fountain</u>	<u>La</u>	<u>Oliver</u>	<u>Western</u>	<u>Office</u>	<u>Other</u>
	<u>Manor</u>	<u>Loma</u>	<u>Cromwell</u>	<u>Arms</u>			
Salaries & Wages	\$6,108.74	\$1,621.50	\$1,454.71	\$320.00	\$1,479.40	\$633.13	\$600.00
Social Security	(122.55)						
S. U. I.	(62.09)						
Income Tax Withheld	(397.40)	(210.72)	(223.66)	(53.42)	(190.53)	(107.71)	(111.00)
Employees' Rent	(315.00)						
<u>Decorations, Repair & Rep.</u>							
Linen & Bedding	934.66						
Painting	375.65						
Curtains & Drapes	123.38	40.05	34.16				
Cleaning	20.00						
Plumbing	277.92	54.56	153.37	35.16	17.50	17.33	
Furnishings	66.93		49.08		17.85		
Upholstering	209.10				18.45	190.65	
Repairs	212.94	3.60	68.02	8.00	26.32	107.00	
Other -- Bank Charge	4.03						4.03
Mtge. Payment-Interest	627.72						
Principal 1,399.53							
Director of Int.Rev.	482.37						
Less Discounts	162.90	44.67	46.01	12.36	40.59	20.27	
TOTAL FEBRUARY, 1954, \$14,305.98		\$2,638.42	\$3,059.15	\$693.93	\$3,152.04	\$1,637.80	\$569.24
DISBURSEMENTS AS PER							\$2,555.40

DISBURSEMENTS MADE BY THE RECEIVER AS DIRECTED BY THE COURT
 COVERING LIABILITIES INCURRED PRIOR TO FEBRUARY 28, 1954,
 BUT NOT PAID UNTIL AFTER THAT DATE.

<u>Name & Address</u>	<u>Total</u>	<u>CA</u>	<u>FM</u>	<u>LL</u>	<u>OC</u>	<u>WA</u>
Ace Specialty Co. 5285 N. Pico, L.A. 19	\$58.18			\$58.18		
Acme Forms 1517 Beverly Blvd., L.A. 26	2.59				\$2.59	
Arden Milk 103 So. Hamel Rd., L.A. 48	93.72		\$93.72			
Arrowhead & Puritas Waters 1566 E. Washington Blvd., L.A.	14.07		14.07			
Barker Bros. 7th & Figueras	773.27	-	309.38	180.29	211.15	\$72.45
Calif. Refrigeration Co. 5905 Melrose Ave., L.A. 38	78.26	5.00	8.50	31.42	5.00	28.34
Cascade Laundry 4414 Santa Monica, L.A.	1,023.44	298.36	260.56	66.69	244.97	152.86
City Curtain & Blank. Cleaners 5155 So. Western Ave., L.A.	75.60	18.22	28.49	9.69	13.18	6.02
Coast Shade & Venetian Blind 4900 W. Santa Monica Blvd., LA	7.74			7.74		
Columbia Pest Control Co. 101 No. Virgil, L. A. 4	26.00	--	7.50	4.50	7.50	6.50
Crescent Refining & Oil Co. 2460 S. 2 nd St., L.A. 58	316.83	89.11	--	70.72	78.50	78.50
Elevator Maintenance Co., Ltd. 1316 Glendale Blvd., L.A. 26	62.16	12.50	5.00	6.00	32.66	6.00

<u>Name & Address</u>	<u>Total</u>	<u>CA</u>	<u>FM</u>	<u>LL</u>	<u>OC</u>	<u>WA</u>
Carl Ericson, painter 1057 So. Western, L.A. 6	\$75.00		\$75.00			
Frazer Bros. Oil Burner 1044 So. Western, L.A. 6	10.00	\$10.00				
Gibbs Bros. Electric 702 No. Broadway, L.A. 12	10.98			\$10.98		
Hoover Company 8705 West 3rd, L.A. 48	16.33				\$16.33	
Jesse M. Few Electric Co. 1515 West 7th, L.A. 17	10.94		10.94			
Los Angeles Soap Co. 617 East 1st, L.A. 54	28.66				\$28.66	
Los Angeles Times 202 West 1st, L.A.	11.76		11.76			
MacMillan, Robert 1238 No. Mariposa	24.54				24.54	
McConnell, A. F. 418 So. Normandie	11.00				11.00	
Murphy Bed Sales Co. 8048 West 3rd, L.A. 48 - Dis. 31	15.50		15.19	11.50		14.00
Normandie Refrigeration 4221 Beverly Blvd.	503.98		4.00			499.98
Paramount Clean. & Dyers 4368 West 3rd, L.A. 5	52.89	9.77			43.12	
Pfeiffers Upholstering Co. 4812 So. Western, L. A.	338.25		112.75	112.75		112.75

<u>Name & Address</u>	<u>Total</u>	<u>CA</u>	<u>FM</u>	<u>LL</u>	<u>OC</u>	<u>WA</u>
Red Lilly Plumbing	\$192.16	\$26.39	\$88.63	\$69.07	\$8.07	--
2316 Hyperion, L.A. - Disc. <u>19.21</u>	\$172.95					
Service Supply Co.	24.30			24.30		
7265 Beverly Blvd. - Disc. <u>.49</u>	23.81					
Truman Doyle Method, Inc.	43.56			36.46		7.10
7116 Santa Monica Blvd. - Disc. <u>.87</u>	42.69					
Turell, Edith J.	38.70			38.70		
5337 La Cresta Court, L.A.						
United Upholstering Co.	10.15			10.15		
3000 Sunset Blvd.						
West Coast Specialty Co.	146.20		18.43	36.18	16.24	28.80
550 So. Western - Disc. <u>2.92</u>	143.28					46.55
Western Union	15.62		3.05	4.54		8.03
741 So. Flower, L.A. 17						
Wilshire Type. & Office Equip.	6.13					
143 So. Western						
Citizens Nat'l Bank-Fed. Deposit. Rec.	562.63					
Liberty Mutual Insurance, L.A.	31.83				31.83	
Jean Findeisen- office	103.18					
Dep't of Water & Power, 207 So. B'way	141.61				141.61	
Pacific Telephone & Tel. Co.	865.66	331.26	265.57	--	260.95	7.88
740 So. Olive, L. A.						
So. Calif. Gas Co.	321.78	84.68			124.30	112.80
810 So. Flower, L. A.						
TOTAL	<u>\$6,121.40</u>					

RECAPITULATION: Balance in bank as of February 28, 1954: \$26,819.11
 Payments as listed above..... 6,121.40
 Balance as of March 10, 1954..... \$20,697.71

LIST OF ALL KNOWN CREDITORS OF THE FORMER RICHMAN TRUST
 WITH NAMES, ADDRESSES, AND AMOUNTS OF CLAIMS, INCLUDING
 BOTH SPECIFIC AND CONTINGENT CLAIMS, AS OF MARCH 10, 1954

<u>Name & Address</u>	<u>Nature of Claim</u>	<u>Amount</u>
Air Pollution Control, Inc. 357 No. La Brea, Los Angeles	Catalytic unit at Canterbury and " at Oliver Cromwell	\$1,329.40 1,329.40
Calif. Refrigeration Main. Co. 5905 Melrose Ave., L. A. 38	For dissatisfaction work at Western Arms	61.10
Los Angeles Times 202 West 1st, L. A.	Advertising, March 1 to March 5 for Fountain Manor	4.68
H. L. Byram, Tax Collector Hall of Justice, L. A. 12	2nd installment taxes due April 10 on the five buildings	14,858.31
Payroll taxes:		
Withholding tax		262.55
F.O.A.B. Tax- Employees		125.96
State Unemployment Insurance-Employer		332.71
Mutual Benefit Life Insurance Co. c/o Pacific Mortgage Corp. 210 West 7th, Los Angeles	Oliver Cromwell Trust Deed Payable +2,027.25 monthly -Balance-	
Frederick I. Richman 417 South Hill, Los Angeles	Management Fee for Nov., 1953 in amount claimed by F. I. Richman to be 10% of \$1,043.33...	3,104.33
Fees to Receiver and his Attorneys in amounts to be fixed by the Court.		
Pacific Telephone & Telegraph Co. 740 South Olive, Los Angeles	House bills from following dates: Canterbury-2/6/54; Fountain Manor- 2/11/54; and Oliver Cromwell-2/21/54, and Managers' telephone bills.	
Department of Water & Power 207 South Broadway, L. A.	Bills from: Canterbury-2/12/54; Fountain Manor-2/10/54; La Loma-2/25/54; Oliver Cromwell, 2/5/54; and W. Arms-2/10/54	
Southern Calif. Gas Co. 810 So. Flower, Los Angeles	Bills from: Canterbury-2/12/54; Fountain Manor-2/5/54; La Loma-2/3/54; O. Cromwell-2/25/54; Western Arms-2/16/54.	

<u>Name & Address</u>	<u>Nature of Claim</u>	<u>Amount</u>
A. Reeger & Sons 745 Merchant, Los Angeles	For undelivered laundry ordered for the Mountain Manor	93.32
Pacific Telephone & Telegraph Co. 740 South Olive, Los Angeles	Listing of the Canterbury, Mountain Manor, and Oliver Cromwell pt. Hotels in the Classified section of the telephone directory to come out in August, 1954	2.75 monthly
Barker Bros. 7th & Figueroa	For Mountain Manor linen ordered but not delivered in February	

[Endorsed]: Filed March 18, 1954.

[Title of District Court and Cause.]

NOTICE OF HEARING ON (1) FIRST AND FINAL REPORT OF RECEIVER, (2) PETITION FOR ALLOWANCE OF FEE TO RECEIVER, AND (3) PETITION FOR ALLOWANCE OF FEES TO ATTORNEYS FOR RECEIVER

To Plaintiff Lyda Tidwell and Messrs. Martin, Hahn & Camusi, her Attorneys of Record, and to Defendant Frederick I. Richman and Joseph T. Enright, Esq., and Messrs. Brady, Nossaman & Paulston, his Attorneys of Record, and to all known creditors of the former Richman Trust as of the close of business on March 10, 1954.

Notice Is Hereby Given that the following matters will come on for hearing on Monday, April 12, 1954, at the hour of 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, before Honorable Ernest A. Tolin, Judge of the above entitled Court, in Court Room No. 6 in the United States Court House and Post Office Building, Los Angeles, California, to wit:

1. First and final report of Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, [157] said Roy E. Hallberg being hereinafter referred to as "the Receiver."

2. Petition for allowance of a fee to the Receiver in such an amount as said Court may find to be just

and reasonable for the services necessarily rendered by him as Receiver during the period commencing December 1, 1953, to and including February 28, 1954.

3. Petition for allowance of fees to FitzPatrick & Whyte and John Whyte, as attorneys for the Receiver, in the sum of \$3,000 for ordinary legal services necessarily performed by them during the period commencing November 30, 1953, to and including March 17, 1954, and in such further sum as said Court may find to be just and reasonable for extraordinary legal services necessarily performed by them during the same period.

Dated: March 24, 1954.

FITZPATRICK & WHYTE,
JOHN WHYTE,
/s/ By JOHN WHYTE,
Attorneys for the Receiver [158]

Affidavit of Service by Mail attached. [159]

[Endorsed]: Filed March 24, 1954.

DEFENDANT'S EXHIBIT B

[Title of District Court and Cause.]

DISMISSAL WITH PREJUDICE

Comes now the plaintiff individually and as co-trustee and as beneficiary under Richman Trust, and dismisses the above-entitled action with prejudice as against all defendants.

Dated this 3rd day of March, 1954.

/s/ LYDA TIDWELL

MARTIN, HAHN & CAMUSI,

/s/ By LAURENCE B. MARTIN,
Attorneys for Plaintiff

It is so ordered except that jurisdiction is retained over all monies, credits and assets in possession or under control of Roy E. Hallberg, receiver heretofore appointed herein, and over said receiver and to fix his compensation and allow his expenses including fee for his attorney.

March 22, 1954.

/s/ ERNEST A. TOLIN,
Judge

[161]

[Endorsed]: Filed and entered March 25, 1954.

[Title of District Court and Cause.]

OBJECTIONS AND ANSWER TO REPORT AND PETITIONS OF RECEIVER AND HIS ATTORNEY FOR FEES

Comes Now defendant, Frederick I. Richman, for himself and other interested parties, and in answer to the Report and Petition of the Receiver, Roy E. Hallberg, dated March 18, 1954, alleges:

1. Answering paragraph 3, page 2, line 17, alleges that the Receiver took possession of the properties by exercising dominion and control over each

of the five managers managing the apartment houses and gave directions to the Union Bank and Trust Company where the funds of the Richman Trust were deposited, commencing November 30, 1953, instead of December 2, 1953, as alleged.

2. Answering that portion of paragraph 4, page 3, line 16, alleges that the Receiver has failed to retain possession and control of \$785, or more, which was under his control and dominion, in the form of petty cash in the possession of the five managers of the five apartment houses, and the Receiver has permitted this money to be surrendered to the plaintiff, Lyda Tidwell.

3. Answering the allegations of paragraph 5, commencing page 3, line 17 to page 8, line 6, admits that the Receiver, usually through others [163] designated as his agents, most, if not all of whom, have been compensated for services out of funds of the estate; did direct the Union Bank to transfer the Richman Trust funds to him; did employ Roy Harrison, who had for many months kept the books of Richman Trust; did collect the rents from the five apartment house managers, which five apartment house managers had for many months collected the rents; did deliver supplies on some occasions to some of the apartments; did continue a policy of insurance, pay County taxes and move files. Upon information and belief, defendant denies that the Receiver did inspect the apartment houses on more than two occasions; alleges he did, by agents exercising in their discretion, supervise certain renovating at the Fountain Manor and West-

ern Arms Apartments, and place Christmas trees in the apartment houses; did, through his counsel, petition the Court to pay a customary and usual Christmas bonus theretofore paid by the Richman Trust; did terminate fire insurance policies and a program of many years duration established by Richman Trust with the approval of all interested parties of Richman Trust, and place in effect mutual insurance issued by Liberty Mutual Insurance Company, which may for a particular year result in a discount of 10%, but your answering party is informed and believes, and upon information and belief, alleges it would result in a greater cost paid claims considered; did, through agents, change the bank account from Union Bank to a bank at Third and Western Avenues; did attempt to revise without completion an accounting system; did, in December, review an Order of the Los Angeles County Air Pollution Authority, being a duly constituted Government agency, and a contract approved by that Authority made by your answering defendant with Air Pollution Control, Inc., and did, in December, direct his agent to direct the Air Pollution Control, Inc., not to perform the contract, resulting in the Order of the Government Authority not being performed, and as a direct and proximate consequence of the act of the Receiver, a criminal misdemeanor complaint was issued by the Clerk of the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, against your answering defendant and the [164] manager of one of the apartment houses: your answering

defendant is informed and believes, and upon information and belief, alleges that the Receiver did, through agents, supervise some repainting of the lobby of the La Loma, accompany appraisers of the plaintiff, obtain bids on painting, examine apartments, confer with upholsterers, select linens, distribute payroll checks, purchase supplies, confer with Air Pollution Control's district officers after the criminal complaint citation had been issued, confer with the Building Department of the City of Los Angeles, confer with the Director of Internal Revenue, prepare a claim for workmen's compensation for a manager of the Oliver Cromwell Apartments, fail to be available to render services and thereafter fail to supervise repair of the refrigeration unit at the Western Arms Apartments, did appear and testify in support of his petition for authority to renovate individual apartments. Your answering defendant is informed and believes, and upon information and belief, states that the Receiver's testimony was at least very inaccurate, if not untrue, as to the number of vacancies and the reasons given for the tenants having then recently vacated certain of the apartments; that he did confer with one or more of the attorneys for the plaintiff as to the method of capitalizing expenses and other matters, but at all times failed and neglected to confer with your answering defendant, although directed by the Court to do so; that he did confer with his attorney in an effort to submit a report as required by the rules of this Court, and being then unable to prepare the report, did, thereafter,

obtain an Order of this Court extending his time within which to file the report.

4. Answering paragraph 6, page 8, line 6, your answering defendant can not at this time admit or deny the accuracy of schedules B and C of the accounting for the reason that it will require additional time to audit the incomplete records, files and invoices kept and maintained by the Receiver. That based upon the examination of the records of the Receiver at this time, defendant alleges, upon information and belief, that page 1 of the schedule B, Western Arms amount shown as \$4,975.75, is erroneous in that the amount should be \$4,707.40. Page 2, schedule B, Canterbury receipts [165] shown as \$8,307.31 should be \$9,059.59. Western Arms amount in the sum of \$4,185.94 is erroneous. Schedule B, page 3, the details shown under the column "Disbursements for December, 1953, Operating, Maintenance, and Renovation Expense (see Exhibit II hereto)" is inaccurate, incomplete and incapable, at least as of this time of audit. Schedule B, page 4, reflects the sum of \$1,789.29 as being office expense, to which amount should be added employer's contribution, plus \$95.67, \$84.50 and \$111.50, or more, for social security and unemployment insurance when ascertaining presently known expenses of the Receiver, which expenses are normally borne by and paid by apartment house property managers when receiving compensation of approximately 5%, dependent upon the services they render. Page 2, Exhibit 2, schedule B, reveals the expenditure by the Receiver of \$638.16 and \$1,-

389.09, as and for trust deed note payment upon the Oliver Cromwell, due on March 1, 1954, which payment was made by the Receiver on February 27, 1954, after the Court had made its Order of February 26, 1954, directing the Receiver to retain all monies then in his possession. That the accounting reflects numerous items under the head "Office" or "Other", which can not at this time be audited, or the reason for their expenditure ascertained. That page 4 of Exhibit B reveals the sum of \$785 as being "Imprest Petty Cash Funds on Apartments, February 28, 1954". Your answering defendant is informed and believes that the Receiver failed and neglected to retain possession and control of these funds as required by the Court Order of February 26, 1954, and has relinquished control and possession of these funds to the plaintiff in this action. Defendant is further informed and believes, and upon information and belief, states that the Receiver has correctly alleged on page 12, line 32, that he failed to collect approximately \$2,000 rents received by the five managers of the apartment houses during the period February 26th to the 28th, inclusive.

5. Answering paragraph 7, defendant alleges that the rental factor was no higher during the Receiver's control than it had been during similar months of many previous years; that the Receiver lent no credit of [166] any kind or nature to the financing of the operation of the property; that there was ample cash available to fulfill the contracts with Air Pollution Control, Inc.; denies that the Re-

ceiver expended a great deal of his time in analyzing and appraising the condition of the apartment houses; alleges that the Receiver lacked knowledge and knowhow in attending to the parapet wall problems. As to the remaining opinions and conclusions of the Receiver's allegations, defendant here refers to the remainder of this, his answer, as an answer to these allegations.

6. Answering the allegations of paragraph 8, page 12, line 21, defendant alleges that the Receiver spent very little of his time in the administration of the receivership properties, in fact so little time was expended that his directions disrupted the operations of the property. That his services consisted primarily in his delegating his duties to others and these services consisted simply of the collecting of monies from managers who had been for many months and still are, excepting one, managing each of the individual apartment houses. That the services rendered were rendered in a negligent and incompetent manner. That the Receiver lacked fidelity to performing the details required of him in operating five apartment houses consisting of approximately 409 apartments. That the Receiver's indirect or possible claim of compensation in the amount of 5% of the gross receipts, plus a further claim for extraordinary services, is excessive, unreasonable, and inequitable. That the Receiver did delegate most, if not all, of his duties to others and has, from the funds collected, paid others for the services they rendered. That the Receiver has issued checks to Katherine Cosgrove in the amount of

\$29.43 and \$29.40 and possibly others, and your answering defendant is informed and believes, and upon information and belief, states that there are no records available to show the reason for these payments. That your answering defendant is informed and believes, and upon information and belief, alleges that the Receiver represented to the Court, before his appointment, that he had for some years engaged in the management of property similar to the property of the Richman Trust, and that his main [167] vocation for some years was in the management of such property, including management under Court Receivership. That defendant is informed and believes, and upon information and belief, alleges that the Receiver had not had such experience; that the Receiver, in fact, had little, if any, knowhow in the management of similar property, or in the rendition of executive and administrative services. Defendant is further informed and believes, and upon information and belief, states that the Receiver misrepresented to this Court his business experience, his educational qualifications, and the amount of time he had available to administer the assets of the Richman Trust.

7. Answering the Petition of Fitzpatrick and John Whyte, dated March 18, 1954, praying for an order allowing them \$3,000.00 as ordinary attorneys' fees, and that this Court award an additional sum as and for extraordinary fees, alleges:

A. Defendant is informed and believes and upon information and belief denies that said attorneys

expended 91 hours in rendering legal services to the Receiver, and further alleges that a rate of compensation in excess of \$30.00 per hour, is excessive and unreasonable;

B. That the attorneys for the Receiver were not required to render any extraordinary services and, in fact, the services rendered consisted of ordinary consultation upon the duties of a Receiver in qualifying as a Receiver, attempting to prepare a report, as required by the Court rules, dictating and causing to be typed a Petition for authority to renovate apartments, and the preparation of theirs and the Receiver's Petition for their fees, except a problem pertaining to the compliance with a Los Angeles Air Pollution Control District Order, and contracts required by it to be performed. Concerning the rendition of these services, defendant is informed and believes and upon information and belief alleges [168] that the attorneys either failed to research the law as to the duties of Federal Receivers to comply with orders of local authorities, or without aid of research erroneously informed the Receiver that he need not comply with the Pollution District's Order. That said attorneys are not entitled to compensation for extraordinary services rendered in an effort to obtain a dismissal of the criminal complaint filed against one of the Receiver's agents, a manager, and your answering defendant, under the circumstances.

8. Your answering defendant alleges that the Receiver, Roy E. Hallberg, failed to perform the

Orders of this Court and should be surcharged for the following amounts of money:

A. On February 26, 1954, this Court made its Order directing the Receiver to surrender possession of the apartment house properties on or before March 1, 1954, and to retain in his possession all the monies then collected and under his control or dominion and the monies on deposit in the bank account opened and maintained by the Receiver. That the Receiver failed and neglected to collect the monies received by some, if not all, of the five managers of the five apartment houses during the period February 26, 27 and 28, 1954. That page 12 of the Receiver's report acknowledges this fact and upon the acknowledgment there made, defendant alleges that the Receiver should be surcharged for the sum of \$2,000.00.

B. That the Receiver's report, schedule B, page 4, acknowledges that as of February 28, 1954, there were petty cash funds in the amount of \$785. Your answering defendant is informed and believes, and upon information and belief, alleges that the [169] Receiver permitted this sum of money to remain in the possession of the managers of the five apartment houses and that this sum of money is now in the possession of or under the control of the plaintiff, Lyda Tidwell. That the Receiver should be surcharged with this sum of money, to wit, \$785.00.

C. That your answering defendant is informed and believes, and upon information and belief, alleges that after the making of the Order of this

Court, dated February 26, 1954, above alleged, and not earlier than February 27, 1954, the Receiver did issue his check in the sum of \$2,027.25, being for the payment of interest and a principal installment upon a trust deed note secured by the Oliver Cromwell Apartments, which note was not due or payable until March 1, 1954, and which payment was made by the Receiver contrary to the provisions and requirements of the Order dated February 26, 1954, and the Stipulation upon which it was based. Therefore, the Receiver should be surcharged in the sum of \$2,027.25.

D. That your answering defendant is informed and believes, and upon information and belief, alleges that other funds were expended by the Receiver contrary to his rights and obligations or contrary to Orders of this Court. That your answering defendant will, upon audit being made of the records of the Receiver, specifically allege the amounts, dates, and parties to whom [170] paid, being now only informed of the issuance of two checks to one Katherine Cosgrove.

E. That the Receiver, on or about December 31, 1954, failed to pay to your answering party the sum of \$3,104.33 as and for the services of your answering party in accordance with the terms and conditions of the Richman Trust Agreement dated November 1, 1945, although said Receiver has reported in his accounting, schedule B, that your answering defendant is a creditor in the amount of \$3,104.33.

F. Your answering defendant is informed and believes, and upon information and belief, alleges that it would be difficult, if not impossible, for the Honorable Ernest A. Tolin, Judge presiding in the above entitled action and Receivership, to impartially try the issue involving the reasonableness of the fees to be paid to the Receiver, Roy E. Hallberg, and his attorneys, Fitzpatrick and Whyte, because of the following circumstances:

(a) The representations made by the Receiver concerning his qualifications, experience and know-how, were made to the Honorable Ernest A. Tolin, and it may require said Honorable Ernest A. Tolin to appear as a witness in a proceeding before him.

(b) That although the Honorable Ernest A. Tolin was only a casual acquaintance of Roy E. Hallberg, he did duly appoint said Roy E. Hallberg, Receiver in [171] this proceeding, and may, because of his having appointed the Receiver, be inclined to advocate, or to a degree defend the conduct or assert the rights of the Receiver.

(c) That the Honorable Ernest A. Tolin, did, on December 2, 1953, acknowledge that before the receipt of evidence at the trial in the above entitled action and before the rendition of his decision of November 30, 1953, that he had obtained information from accountants who asserted improper conduct on the part of your answering defendant in complying with discovery orders issued by this Court. Specifically, at page 48, line 5, for example. That there was at no time any hearing concerning the conduct of your answering defendant, save and

except on one occasion after your answering defendant had exhausted the discovery process of this Court, except deposition proceedings, to obtain possession or inspection of a file containing correspondence had between plaintiff and defendant, your answering defendant did take possession of this file and did cause the file to be lodged with this Court upon discovering that the plaintiff had control and dominion of said file.

(d) That the terms and conditions of the Order of this Court, dated February 26, 1954, [172] amongst other things, required that the Receiver retain in his possession "money in bank and under the control of said Receiver". That in all other respects the Receiver was relieved of his then obligations, except the duty to collect monies for rents, to and including 5:00 p.m., February 28, 1954. That the Receiver was, by virtue of this Court Order, required to file his accounting in the due course of business and upon his accounting being settled and an Order made upon his and his attorneys' fees, the remainder of the monies in the possession of the Receiver were subject to the directions of the parties in the above entitled action. That the plaintiff and defendant had, on February 26, 1954, entered into an agreement in writing determining their rights to the monies in the possession of the Receiver. That a true and correct copy of this agreement is attached hereto and marked Exhibit A. That under and pursuant to the terms and provisions of this agreement, plaintiff, Lyda Tidwell, and your answering defendant, are en-

tituled to receive all monies remaining in the hands of the Receiver, and in the event they can not agree upon their distribution, then each is entitled to apply to a Court of competent jurisdiction to initially and originally determine their respective rights. [173]

Wherefore, your answering defendant prays:

(1) That the Honorable Ernest A. Tolin request the presiding Judge of the above entitled Court to assign another Judge of this Court to hear and determine the petitions of the Receiver and his attorneys for fees;

(2) That the petitions and this answer and the answer of any other interested party be set for trial upon the issues created by said pleadings;

(3) That the trial of the issues created by these pleadings be not had until your answering defendant has had an opportunity to avail himself of the discovery processes of this Court to prepare for a hearing upon the Receiver's petition for more than \$4,500 fees and the attorneys' petition for more than \$3,000 fees and for such other and further relief as may be just and proper in the premises.

Dated: April 5, 1954.

BRADY, NOSSAMAN & PAULSTON

and JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT,

Attorneys for Defendant

[174]

EXHIBIT A
(Defendants' Exhibit H)

[Letterhead of Joseph T. Enright]

Laurence B. Martin, Esq. Feb. 19, 1954
Martin, Hahn & Camusi,
530 West 6th St. Suite 701
Los Angeles 14, California

Re: Tidwell vs. Richman

Dear Sir:

I am in receipt of your letter of the 16th instant and wish to thank you for the same.

As I review the matter, the court decision gave your client what she was offered two and a half years ago before suit was filed, namely, a division of the trust. The court in the decision avoided any intimation of fraud on the part of Mr. Richman and your auditing has not produced any fraud. Therefore, until such time as the last court has sustained your contention of any fraudulent acts on the part of Mr. Richman, you may not expect any concession from Mr. Richman that in any way implicates him with fraud.

Your intimations that any arrangement Mr. Richman might make that he would not live up to are not appreciated. Bear in mind the record in this case is full of examples of Mrs. Tidwell changing her mind after agreements have been made, and I can assure you that anything Mr. Richman agrees to will be carried out.

In regards to your request that I spell out "ex-

actly" the precise terms and wording of the release, I do not think that is at all necessary. Any agreement made contemplates a full release of any and all claims that either Mr. Richman or Mrs. Tidwell have or think they have against the other from the beginning of the world to the present time. If this matter is going to be terminated, it is my desire to have it terminated completely and not by use of trick terminology which might subject it to other law suits in the future.

I construe the first paragraph on the second page of your letter of February 16th as being a proposal for Mr. Richman to submit a buy or sell proposition. Mr. Richman is not interested in the \$500,-000.00 figure inasmuch as that was a negotiation figure and you have seen fit to put him in the spot of bidding against himself, but now that you have asked for a buy or sell [175] proposition I am authorized to submit the following, and Mrs. Tidwell may buy or sell as she sees fit to terminate all matters. The proposition is as follows:

1. Both parties mutually release each other of any and all claims known or unknown, that they have against the other from the beginning of the world to the present time.
2. Both parties shall bear their own expenses.
3. Mutual dismissals with prejudice will be entered in the law suit.
4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and

shall assume all operating obligations of the Richman Trust from March 1, 1954 on or until the re-appointment of a receiver as might occur under 7 (c) hereof.

5. The receiver shall file his report and after the payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman.

6. Richman Trust shall be terminated and the property therein and now being controlled by the receiver distributed in equal shares as undivided interests to Mrs. Tidwell and Mr. Richman.

7. Mrs. Tidwell shall have her election to either buy Mr. Richman's undivided half interest in the assets of Richman Trust, or to sell her undivided one-half interest in the assets of Richman Trust for the sum of \$600,000.00, payable on the following basis:

(a) \$100,000.00 cash shall be paid February 26, 1954 by the party buying to the other upon the notification by Mrs. Tidwell as to her determination of whether she is buying or selling the undivided interest of the assets in Richman Trust. [176]

(b) \$500,000.00 shall be paid through escrow to the party selling on or before May 1, 1954.

(c) In the event the \$500,000.00 is not paid through escrow on or before May 1, 1954, then a receiver may be re-instated to operate the assets of Richman Trust and the \$100,000.00 paid upon Mrs.

Tidwell's election shall be forfeited and all items hereinabove enumerated, except the forfeiture of the \$100,000.00 and retention of operating income as provided in 4 hereof, shall be of no force and effect, and the parties shall be in the same position as they now are except for the forfeiture of the \$100,000.00 and retention of operating income.

8. Mrs. Tidwell shall notify Mr. Richman of her election on or before February 25, 1954 and shall deliver to Mr. Richman on or before February 26, 1954, in writing, her unqualified acceptance of the terms herein stated and her election, and on February 26, 1954, the \$100,000.00 above mentioned shall be paid to the party entitled to receive the same.

9. All parties will execute whatever is necessary to carry out the terms of this arrangement.

10. Each party may do whatever he or she deems necessary to protect his or her legal position prior to May 1, 1954.

Very truly yours,

s/ Joseph T. Enright

JTE:MH

The above is acceptable to me and I agree to be bound by the terms thereof.

/s/ Frederick I. Richman

[177]

[Letterhead of Martin, Hahn & Camusi]

Mr. Frederick I. Richman Feb. 25, 1954
417 South Hill Street, Suite 926
Los Angeles 13, California
Re: Tidwell vs. Richman

Dear Sir:

We desire to acknowledge receipt of the letter of February 19th, 1954, sent to us by Mr. Enright, your attorney, and on which your agreement and approval was duly noted.

We hereby advise you that Mrs. Tidwell accepts unqualifiedly the terms and provisions as set forth in said letter of February 19th, 1954, and that she elects to and agrees to purchase all of your right, title and interest in the assets of the Richman Trust, on the terms, provisions and conditions stated therein, and for the sum and amount therein set forth.

In accordance with said letter of February 19th, 1954, and as evidence of good faith in her acceptance, we are transmitting herewith a Cashier's Check, in the sum of \$100,000.00, payable to you. Also, in accordance with the terms of your proposal, which Mrs. Tidwell does here and now accept, she will pay the balance as outlined by you. She is prepared to open an escrow so she may complete the purchase of your interest as expeditiously as possible. In accordance with the usual custom in such matters, and as buyer, we would prefer to open and handle the escrow through the main office of the California Bank. We shall, in all respects, do our part to carry out the terms and provisions of the

proposal in entire good faith, and we are sure you are equally desirous of bringing this entire situation to a conclusion as expeditiously as possible.

This letter is addressed to you since that appears to be your desire in the communication of February 19th, 1954, and is being delivered to you personally, or, in the event you are not at your office, the original will be left at your office. A signed copy is being likewise mailed to you at your office, and, of course, a copy thereof is being transmitted to your attorney, Mr. Joseph T. Enright.

Very truly yours,

Martin, Hahn & Camusi,

/s/ By Laurence B. Martin

LBM:GP

The above acceptance of the proposal of Frederick I. Richman to sell all of his interest in the Richman Trust to me is approved and agreed to by me, and I agree to be bound by the terms of said proposal of February 19th, 1954, and the unqualified acceptance as contained in the above letter.

/s/ Lyda R. Tidwell

P.S.—The Cashier's Check in the amount of \$100,000.00 payable to you, is being delivered to you personally, or left at your office in the event you are absent therefrom, along with the original of this letter. /s/ L.B.M. [179]

Duly Verified.

Affidavit of Service by Mail attached.

[180]

[Endorsed]: Filed April 6, 1954.

[Title of District Court and Cause.]

OBJECTIONS TO FIRST AND FINAL REPORT OF RECEIVER

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

Comes Now Plaintiff, Lyda Tidwell, and objects
to the First and Final Report of the Receiver, for
the following reasons:

Although plaintiff does not contest the accuracy
of the figures listed in said First and Final Report,
hereinafter referred to as "Receiver's Report",
plaintiff does object to the Receiver's Report inso-
far as final approval of said report may affect her
rights to a division of the funds remaining with
defendant, Frederick I. Richman, after allowance of
Receiver's and Receiver's attorney's fees:

By court order dated February 26, 1954, it was
provided, among other things, that:

"* * * the Receiver, Roy E. Hallberg, shall be
relieved of his active duties of management, con-
trol and possession of the assets known as the Rich-
man Trust, as of five o'clock p.m., [181] February
28, 1954, and that the said Receiver, Roy E. Hall-
berg, his agents and employees, and all other
agents, servants and employees of the Richman
Trust, give over control and possession to Lyda
Tidwell, plaintiff, of all the assets of the said Rich-
man Trust, excepting money, in bank and under the
control of said Receiver, * * *"

The above court order was obtained by stipula-

tion of the parties as one of the steps required to finally and completely dispose of the within litigation. The agreement for settlement is controlled by an offer letter of defendant, dated February 19, 1954, and by an unqualified acceptance letter of plaintiff, dated February 25, 1954.

The complete offer of defendant, as stated in the offer letter of February 19, 1954, reads as follows:

“* * * The proposition is as follows:

1. Both parties mutually release each other of any and all claims known or unknown, that they have against the other from the beginning of the world to the present time.
2. Both parties shall bear their own expenses.
3. Mutual dismissals with prejudice will be entered in the law suit.
4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 on or until the re-appointment of a receiver as might occur under 7(c) hereof.
5. The receiver shall file his report and after the payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman.
6. Richman Trust shall be terminated and the property therein [182] and now being controlled by the receiver distributed in equal shares as un-

divided interests to Mrs. Tidwell and Mr. Richman.

7. Mrs. Tidwell shall have her election to either buy Mr. Richman's undivided half interest in the assets of Richman Trust, or to sell her undivided one-half interest in the assets of Richman Trust for the sum of \$600,000.00, payable on the following basis:

(a) \$100,000.00 cash shall be paid February 26, 1954 by the party buying to the other upon the notification by Mrs. Tidwell as to her determination of whether she is buying or selling the undivided interest of the assets in Richman Trust.

(b) \$500,000.00 shall be paid through escrow to the party selling on or before May 1, 1954.

(c) In the event the \$500,000.00 is not paid through escrow on or before May 1, 1954, then a receiver may be re-instated to operate the assets of Richman Trust and the \$100,000.00 paid upon Mrs. Tidwell's election shall be forfeited and all items hereinabove enumerated, except the forfeiture of the \$100,000.00 and retention of operating income as provided in 4 hereof, shall be of no force and effect, and the parties shall be in the same position as they now are except for the forfeiture of the \$100,000.00 and retention of operating income.

8. Mrs. Tidwell shall notify Mr. Richman of her election on or before February 25, 1954 and shall deliver to Mr. Richman on or before February 26, 1954, in writing, her unqualified acceptance of the terms herein stated and her election, and on February 26, 1954, the \$100,000.00 above mentioned

shall be paid to the party entitled to receive the same. [183]

9. All parties will execute whatever is necessary to carry out the terms of this arrangement.

10. Each party may do whatever he or she deems necessary to protect his or her legal position prior to May 1, 1954.

Very truly yours,

/s/ Joseph T. Enright

JTE:MH

The above is acceptable to me and I agree to be bound by the terms thereof.

/s/ Frederick I. Richman"

Plaintiff and defendant have performed all acts on their part to be performed in connection with their settlement of the case, except as hereinafter appears. Plaintiff now has title to all trust properties and defendant Frederick I. Richman has received the sum of \$600,000.00.

Plaintiff and defendant, Frederick I. Richman, are in disagreement as to the meaning of said agreement resulting from the offer letter of February 19, 1954, and its unqualified acceptance by plaintiff, and in further disagreement as to the debits and credits to be made to the fund in the hands of the Receiver. This honorable court cannot dispose of the balance of funds remaining in the hands of the Receiver, after making provision for payment of Receiver's fees and fees for the attorney for the

Receiver, until it resolves these questions. The various items in which plaintiff and defendant are in disagreement are as follows:

1. Plaintiff, Lyda Tidwell, was forced to pay real property taxes out of her own funds for the period January 1, 1954 through June 30, 1954, in the sum of \$14,858.31. Since real property taxes are an operating obligation of the trust, and the Receiver had not paid said taxes for the months of January and February, 1954, plaintiff claims that she is entitled to reimbursement out of the Receiver's fund in the sum of \$4,952.77.

2. The receiver made his Final Report without paying water, gas, [184] telephone and electric bills for a portion of the month of February, in the amount of \$1877.50. Plaintiff has now paid these bills and claims reimbursement from the Receiver's fund in this amount.

3. The Receiver has not paid the balances due on two catalytic units installed in the Canterbury and Oliver Cromwell Apartments in the sum of \$1329.40 each, or a total sum of \$2,658.80. These bills were contracted prior to February 28, 1954, and plaintiff claims reimbursement from the Receiver's fund in the amount of \$2658.80 for the reasons above stated.

4. The Receiver collected \$4,499.29 worth of March, 1954 rents in the preceding month of February. Plaintiff claims reimbursement for these March rents from the Receiver's fund since they represent March receipts and, therefore, belong only to plaintiff.

5. The purchase of defendant's interest in the Richman Trust by plaintiff was arranged through an escrow established at the Main Office of California Bank, 629 South Spring Street, Los Angeles, California. In said escrow, plaintiff was charged with the sum of \$577.50 for Internal Revenue Stamps placed on the deed of conveyance from defendant, Frederick I. Richman, to plaintiff. Plaintiff was also charged with defendant seller's escrow fees in the sum of \$329.00 in said escrow. These are charges which should be paid by seller, and plaintiff claims the total sum of \$906.50 from defendant personally. The escrow instructions specifically state the following language:

"These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me and with which agreement California Bank is not to be concerned."

6. There may be other operating expenses of the Richman Trust to February 28, 1954, which have not been paid by the Receiver, and plaintiff will ask leave to amend her objections accordingly should such appear to be the case.

Defendant, Frederick I. Richman, also makes certain claims to the Receiver's fund, as follows:

1. Defendant claims that one of the unpaid operating obligations of the Richman Trust is defendant's agent's fees for the month of November, 1953, in the amount of \$3,104.33. However, this is objected to by plaintiff. The intent of the agree-

ment between plaintiff and defendant is clear. Mutual releases have been executed, and both parties gave up any and all claims which they might have against the Trust and against each other. Defendant, Frederick I. Richman, has always "paid" one-half of the agent's fee since he was one of the beneficiaries. Plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, both also have claims for unpaid net income for the months of November and December, but these were lost to them by virtue of their agreement, and the same is true of defendant Richman's claim for agent's fees.

2. Defendant also claims that the Receiver erroneously made the March payment on the Oliver Cromwell loan, in the sum of \$2027.27. However, the report of the Receiver does not so indicate.

3. Defendant also claims that he is entitled to one-half of moneys collected by certain of the property managers over the week-end of February 27th and 28th. However, portions of these moneys were for February and portions were for March rents. The fair and reasonable interpretation of the agreement of the parties would be to pro-rate all rents to March 1, 1954.

Wherefore, plaintiff prays that the First and Final Report of the Receiver be settled and that the court take evidence with respect to an accounting between plaintiff and defendant, Frederick I. Richman, so that the court may be in a position to determine the respective rights of plaintiff and defendant Richman to the balance of the fund remaining in the Receiver's hands after payment has been

made therefrom to the Receiver and his attorney for services rendered by them.

MARTIN, HAHN & CAMUSI,
/s/ By WILLIAM P. CAMUSI,
Attorneys for Plaintiff,
Lyda Tidwell [186]

[Endorsed]: Filed April 7, 1954.

[Title of District Court and Cause.]

PLAINTIFF'S REPLY TO OBJECTIONS OF
DEFENDANT FREDERICK I. RICHMAN

Comes now Plaintiff, Lyda Tidwell, and in reply to Objections of Defendant, Frederick I. Richman, dated April 5, 1954, alleges as follows:

1. The Receiver was not to retain possession of and/or control of, \$785.00 or more in petty cash. That the order of court dated February 26, 1954, ordered that the Receiver was only to retain possession of money in bank. Furthermore, said petty cash constituted a part of the assets of the Richman Trust which were purchased by Plaintiff Tidwell and which belong to her solely, all in accordance with the agreement of the parties set forth by both of the Objections of Plaintiff and Defendant Richman herein.

2. Plaintiff denies that it would be difficult and/or impossible for the Honorable Ernest A. Tolin to try the issue involving reasonableness of fees in an impartial manner for any reason or reasons in controversy. [187] Plaintiff further al-

leges that this Honorable Court is the only court which has jurisdiction to try the issue of the reasonableness of the Receiver's fee and the fee of the attorney for the Receiver. And further, this Honorable Court is the only court which has jurisdiction to try the issue of Plaintiff's and Defendant Richman's rights to the fund remaining in the hands of the Receiver and the disposal of said fund.

3. With respect to other credits to which Defendant Richman claims he is entitled from the Receiver or from the fund in the Receiver's possession, plaintiff has already stated her position in her Objections previously filed, and reference is hereby made to such objections as though set forth herein in full.

4. The Receiver is entitled to a reasonable fee for his services and the attorney for the Receiver is entitled to a reasonable fee for legal services rendered the Receiver in this matter.

Wherefore, Plaintiff prays that the Final Report and Account and Petitions of the Receiver and his attorneys be settled after hearing and that this Court take evidence and declare the rights of Plaintiff and Defendant Richman to funds remaining in the hands of the Receiver, and order disposition of said fund in accordance therewith.

Dated this 8th day of April, 1954.

MARTIN, HAHN & CAMUSI,
/s/ By WILLIAM P. CAMUSI,
Attorneys for Plaintiff,
Lyda Tidwell [188]

Affidavit of Service by Mail attached. [189]
[Endorsed]: Filed April 12, 1954.

[Title of District Court and Cause.]

PLAINTIFF LYDA TIDWELL'S POINTS AND
AUTHORITIES IN SUPPORT OF HER
OBJECTIONS AND HER REPLY TO DE-
FENDANT RICHMAN'S OBJECTIONS

Court has jurisdiction to settle accounts, declare rights of Plaintiff and Defendant Richman to fund remaining in Receiver's hands and to order disposition in accordance therewith.

Defendant Richman claims on Page 11 of his Objections to the Receiver's Report that he and Plaintiff Lyda Tidwell are entitled to apply to a Court of competent jurisdiction to initially and originally determine their respective rights to the funds remaining in the hands of the Receiver.

This proposition is incorrect. This Court has jurisdiction of the fund and jurisdiction to decide what persons are entitled to distribution of the fund, and in what amounts.

In *Pacific Bank vs. Madera Fruit, Etc. Co.*, 124 Cal. 525, plaintiff dismissed suit after a Receiver had been appointed and after the receiver had taken possession of certain assets. Thereafter the receiver filed his account and petition and asked the court to "settle the same, fix his compensation, et cetera." Plaintiff then filed a motion to dismiss the [190] account and petition on the ground that the court had lost jurisdiction. However, the motion was overruled and this ruling was affirmed on appeal. The decision of the court notes that not only does the

court retain jurisdiction to settle the receiver's account, but it also retains jurisdiction to dispose of the funds in the receiver's possession, saying, the receiver,

* * * "is still amendable to the court as its officer until he has complied with its directions as to the disposal of the funds which he has received during the course of his receivership."

The Pacific Bank case also states, at P. 527,

* * * "If the court below lost jurisdiction of the case by virtue of the dismissal so that it could not settle the accounts of the receiver, nor make any disposition of the funds in his hands, how would the account be settled or the funds disposed of? The money on hand and collected by the receiver is in contemplation of law in the hands of the court to be disposed of as the law directs." (Emphasis ours.)

And,

"If the court in which the receiver was appointed cannot, after the dismissal of the case, settle and adjust the accounts of the receiver, to what jurisdiction will he resort? The dismissal of the case was the end of it as between the parties, but we think the court still retained the power to settle the accounts of its receiver and to direct the application of the funds in his hands." (P. 527) (Emphasis ours.)

It is clear that the receiver is holding funds for disposal at the direction of the court. In *Garniss vs. Superior Court*, 88 Cal. 413, [191] 417, the court

stated, quoting from Beach on Receivers, sec. 249,

“Though a receiver may be, and generally is, appointed upon the application of one of the parties interested in the property which he is to preserve, his holding is not merely for the benefit of such party, or of any other party; it is the holding of the court for the equal benefit of all persons who may be finally adjudged by the court to have rights in it;” (Emphasis ours.)

In State vs. Gibson, 21 Ark. 140, the court, referring to jurisdiction over a receiver after dismissal of the case, said,

“He was an officer of the court and subject to its orders in relation to the partnership effects placed in his hands as receiver until discharged by the court.”

To same effect, see Ireland vs. Nichols, 40 How. Pr. 85; Whiteside vs. Pendergast, 2 Barb. Ch. 471.

Respectfully submitted,

MARTIN, HAHN & CAMUSI,
/s/ By WILLIAM P. CAMUSI,
Attorneys for Plaintiff,
Lyda Tidwell [192]

Affidavit of Service by Mail attached. [193]

[Endorsed]: Filed April 12, 1954.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: April 12, 1954, at Los Angeles, Calif.

Present: Hon. Ernest A. Tolin, District Judge;
Deputy Clerk: Wm. A. White; Reporter: Virginia
Wright; Counsel for Plaintiff: Wm. P. Camusi;
Counsel for Defendants: Joseph Enright; Counsel
for Receiver: John G. Whyte.

Proceedings: For hearing on (1) first and final
report of Receiver; (2) petition for allowance of
fee to Receiver; and (3) petition for allowance of
fees to attorney for Receiver.

Court makes a statement that no evidence will be
taken concerning the appointment of the Receiver
in this action.

Court makes a further statement that if it orders
an audit on its own motion, the charge will be made
against the Receiver, but if one of the litigants
challenges the Receiver's report and requests an
audit, the charge for the same will be made against
the challenging party.

Attorney for defendant states he will take the
depositions of the Receiver and his attorney, after
which he moves the Court to set the matter down
for trial as to the issues of the payment of fees to
the Receiver and his attorney.

It Is Ordered that issues of payment to Receiver
and his attorney is set for trial May 11, 1954, 9:30
a.m., and It Is Further Ordered that issue of bal-
ance of remaining monies by the Receiver, after

payment of his fees and his attorney's, is set for pretrial hearing May 14, 1954, 10 a.m.

Counsel for both sides to file briefs re division of monies on, or before 5 p.m., May 9, 1954.

EDMUND L. SMITH,

Clerk

/s/ By WM. A. WHITE,

Deputy Clerk

[194]

[Title of District Court and Cause.]

PETITION TO DISQUALIFY AND
AUTHORITIES

To the Honorable Ernest A. Tolin, Judge of the
above entitled court:

The Petition of Frederick I. Richman, defendant, respectfully represents that the only remaining issue to be determined by this Court in this action is the accounting and fixation of fees for the services of the receiver and his attorney. That there is now pending Petitions by the receiver and his attorney to have their fees fixed. That defendant has filed objections to these Petitions, in which objections defendant has alleged that the receiver misrepresented his experience, qualifications, and time he had available to act as receiver, which misrepresentations resulted in this Court appointing the receiver. That reference to these allegations are here made and these representations are more specifically hereafter stated. That because of the represen-

tations of the receiver Roy E. Hallberg and his failure to make a full and free disclosure of the facts pertaining to his experience, qualifications, and time he had available to act as receiver [195] of five apartment houses containing in excess of 400 apartments situate in the City of Los Angeles, and requiring the attention of a person experienced in the management and operation of said apartment houses and the full time of such a person, he is guilty of unclean hands, and this Court sitting as a court of equity when determining the amount of compensation to be paid said receiver, should consider the evidence upon the question as to whether or not the receiver Roy E. Hallberg is guilty of unclean hands in making said representations and concealing his lack of time and experience. That the Honorable Ernest A. Tolin is a material witness to the determination of what fees should be paid Roy E. Hallberg for his services as a receiver, in that Roy E. Hallberg made the following representations to the Honorable Ernest A. Tolin, before his appointment as receiver, and at a time when the Honorable Ernest A. Tolin was interviewing him to ascertain his availability, experience, and qualifications to act as receiver of said apartment houses and any other assets of the Richman Trust, which Trust assets were the subject matter of the above entitled suit.

1. Said representations being:

(a) That Roy E. Hallberg had experience in this type of work in Chicago; that he had for some years been associated with property management

operation in Chicago; that he had considerable acquaintance and experience in this type of work;

(b) That his main vocation for some years was in the management of real properties;

(c) That he had experience in connection with Court receiverships;

(d) That he had experience locally (Los Angeles area), in the management of his own real properties;

(e) That he, or his relatives, owned similar properties; [196]

(f) That he maintained a place of business in the Los Angeles area and had, during the past few years, been employed in an executive capacity by various corporations; and

(g) That he then had time and was available to manage and operate the above apartment house properties.

2. That the foregoing representations were not true in that:

(a) Roy E. Hallberg's sole experience in the management of property consisted of his acting for a period of approximately one year, about the year 1931, as an agent and employee of the owner of the bonds of a bank situate and conducting its business in Chicago, Illinois, which bank became defunct, necessitating the owner of the bonds taking possession of certain real property in Chicago, Illinois. That Roy E. Hallberg's experience in the year 1931 did not qualify him by experience or training to manage properties in the years 1953 and 1954 in the City of Los Angeles, and Roy E. Hallberg's sole

other experience was in the management of a 14 unit apartment house situate in South Pasadena, California during the period from December 20, 1949 to November 29, 1950, and in the management of an unfurnished flat consisting of 4 units, situate in the City of Pasadena, California, during the period December 29, 1950, to date, and said Roy E. Hallberg's experience in acquiring and selling two residences which were occupied by him when owned, in Los Angeles, California, and the acquiring of residential property at Corona Del Mar, California.

(b) That Roy E. Hallberg had no experience as agent or representative of elderly and/or wealthy relatives, in the management of apartment house property in Southern California, similar to the five apartment houses he undertook to manage and operate as receiver.

(c) That Roy E. Hallberg, the receiver appointed by this Court, knew at the time of his appointment that he would be employed by the County of Orange, State of California, as an auditor-appraiser, at a salary of approximately \$350.00 per month, and would be required to render services to said County for his compensation during the work days of each week and month thereafter. That, in fact, said Roy E. Hallberg did work for and was an employee of the County of Orange during the period that he was required to actively manage and operate the five apartment houses and other assets of the Richman Trust, and was paid a salary of approximately \$350.00 per month for his services each month.

(d) That Roy E. Hallberg's principal vocation

and occupation during the period 1933 until about March, 1947, was that of a wine salesman with headquarters at Brooklyn, New York, and thereafter said Roy E. Hallberg's occupation consisted of an attempt to sell electrical supplies, including Christmas tree lights, the establishing of distributorships for curtain rods, and an attempt to, after investing \$18,000.00 as a principal, to market a construction tooth for use upon earth-moving equipment. That said Hallberg's experience in each of these ventures did not relate to or in any manner qualify [198] him to operate in excess of 400 apartments situate in the City of Los Angeles.

3. That your petitioner is informed and believes, and upon information and belief states that it will be necessary to call the Honorable Ernest A. Tolin as a witness to testify concerning the representations made by Roy E. Hallberg, to establish your petitioner's objections to Roy E. Hallberg's Petition to be paid a reasonable fee for his services, in which petition Roy E. Hallberg alleges that a fee of approximately \$5,000.00 for his services during the period commencing with his appointment about December 2, 1953, to the termination of his active duties on February 26, 1954, is a reasonable fee. That your petitioner has no objection to Roy E. Hallberg being awarded a reasonable fee, commensurate with the time he expended, based upon said Hallberg's earning capacity which has been for three or more years last past approximately \$100.00 per week, and which sum is the reasonable value of his services and the time Roy E. Hallberg expended.

That in this connection Petitioner is informed and believes and upon information and belief states, that Roy E. Hallberg represented to the Honorable Ernest A. Tolin that he would actively manage said five apartment houses; that Roy E. Hallberg did not actively manage said apartment houses, but did delegate his duties to Katherine Cosgrove, whom he (Hallberg) represented to be his secretary and did, for a period of time after his appointment, conceal that Katherine Cosgrove was, in fact, Mrs. Roy E. Hallberg.

Wherefore, petitioner prays that the Honorable Ernest A. Tolin disqualify himself to hear and determine the issues pending upon the fees of Roy E. Hallberg and his attorney, and to hear and determine the accounting of Roy E. Hallberg.

Dated: April 30, 1954.

BRADY, NOSSAMAN & PAULSTON
and

JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT,
Attorneys for Defendant

[199]

Duly Verified.

Authorities

1. "Any justice or judge of the United States shall disqualify himself in any case in which he * * * is * * * a material witness * * *" 28 USCA 455.

2. No affidavit or particular procedure is required for the making of a request to the court for

the presiding judge to disqualify himself under 28 USCA 455.

Cyc. Fed. Proc. 2nd Ed., Vol. 1, P. 32, Paras. 22 and 23. [200]

Affidavit of Service by Mail attached. [201]

[Endorsed]: Filed April 30, 1954.

[Title of District Court and Cause.]

SUPPLEMENTAL PETITION FOR ALLOWANCE OF FEES TO ATTORNEYS FOR RECEIVER

To the Honorable Ernest A. Tolin, Judge of the above entitled court:

Comes now Messrs. FitzPatrick & Whyte and John Whyte, as attorneys for Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, and for their supplemental petition for allowance of fees for additional legal services heretofore necessarily performed by them both for and on behalf of said Receiver and for and on behalf of themselves from and after March 18, 1954, to and including May 10, 1954, respectfully report and show as follows:

1. Petitioners incorporate herein by reference and reallege as if herein set forth in full each and every allegation contained in Paragraphs 1 and 2, and each of them, of their petition for allowance of

fees to attorneys for Receiver, filed herein on March 18, 1954.

2. Petitioners have necessarily performed additional legal services both for and on behalf of the Receiver and for and on behalf of themselves [202] from and after March 18, 1954, to and including May 10, 1954, in connection with the administration of the business and affairs of the former Richman Trust and in connection with the defense of the Receiver and his attorneys against the objections filed herein on or about April 6, 1954, by defendant Richman to the report and petitions of the Receiver and his attorneys for fees. One of the petitioners, namely, John Whyte, has devoted a total of 28.4 hours of attorneys' time to the performance of said additional legal services as shown on daily time sheets kept by attorneys in the offices of FitzPatrick & Whyte. Of this total of 28.4 hours of attorneys' time, approximately 8.7 hours are allocable to services performed in connection with the administration of the business and affairs of the former Richman Trust, approximately 11.7 hours are allocable to services performed in connection with the defense of the Receiver against the objections raised by defendant Richman to the Receiver's report and petition for allowance of a fee, and approximately 8 hours are allocable to services performed in connection with the defense of the attorneys for the Receiver against the objections raised by defendant Richman to the petition for allowance of fees to attorneys for the Receiver.

3. The nature of said additional legal services

which have been necessarily so performed by petitioners is likewise shown on said daily time sheets and is as follows:

Nature of Legal Services Performed
Date, 1954

March 18: Telephone call from Robert Dulley, insurance broker, re what to do about workmen's compensation insurance policies—Whyte referred him to Camusi. Proofreading final copy of petition of Receiver's attorneys for fees. Details incident to service and filing of Receiver's report and petition for fee and petition of Receiver's attorneys for fees. Letter to Camusi turning over certain papers to him and enclosing check from Brookshire properly endorsed by Hallberg. [203]

March 24: Details incident to service and filing notice of hearing on Receiver's report and petition for fee and petition for fees to his attorneys.

March 25: Telephone call from Air Pollution Control, Inc., re installation of equipment in incinerators at Oliver Cromwell and Canterbury. Telephone call from Enright re form of Receiver's report and petition for fee. Letter to Enright answering his letter to Whyte, dated March 24, 1954. Letter to Hallberg advising him of time of hearing on his report and petition for fee.

April 2: Telephone call from Camusi re his problems in consummating settlement with Richman and Enright—Camusi inquired what amount the Receiver would ask for as a fee.

April 7: Studying Richman's objections to report

and petitions of Receiver and his attorneys. Letter to Hallberg enclosing copy of said objections.

April 8: Telephone call to Mrs. Hallberg re Richman's objections to Receiver's report and petition for fee and arranging for meeting with Hallberg to discuss same.

April 10: Conference with Mr. and Mrs. Hallberg re Richman's objections to Receiver's report and petition for fee.

April 12: In court re scheduled hearing on Receiver's report and petition for fee and attorneys' petition for fees.

April 16: Received letter from Robert Dulley re insurance matters. Letter to Camusi requesting that he take care of this matter.

April 19: Telephone call from Robert Dulley re cancellation by Receiver of workmen's compensation [204] policies on the five apartment houses.

April 21: Conference at Whyte's office between Enright and Whyte during which latter exhibited to former his time slips and correspondence file in this action.

April 22: Whyte present at taking of depositions of Hallberg and himself in Enright's office. Conferences with Mr. and Mrs. Hallberg prior to and during course of depositions.

April 24: Whyte present at continuance of depositions of Hallberg and himself in Enright's office. Conference with Hallberg prior to resumption of taking of said depositions.

April 27: Letter to Hallberg transmitting his

black memorandum book which was returned by the deposition reporter.

April 30: Telephone call from Camusi inquiring about taking of depositions and discussion of how to handle refund from insurance company amounting to approximately \$4,000.

May 1: Whyte read original of his deposition and corrected his answers wherever necessary — also noted corrections on copy of deposition.

May 3: Letter to Hallberg re his deposition. Conference with Hubert Laugharn of the Los Angeles Bar re his appearance as an expert witness on behalf of FitzPatrick & Whyte as to the reasonable value of their services as the Receiver's attorneys.

May 5: Drafting and dictating supplemental petition for fees to attorneys for Receiver. Conference with Mr. and Mrs. Hallberg re Receiver's defense to Richman's objections to Receiver's report and petition for a fee. [205]

May 6: Drafting, dictating, and revising supplemental petition for allowance of fees to attorneys for Receiver. Telephone call to Mr. Bleecher of Air Pollution Control, Inc. seeking information re history of installation of incinerator equipment at Oliver Cromwell. Delivering pleadings to Hubert Laugharn for his study as an expert witness re reasonable value of services rendered by attorneys for Receiver.

May 7: Efforts to line up expert witnesses as to reasonable value of Receiver's services in managing the five apartment houses belonging to the former Richman Trust. Research re attorney's right to com-

pensation for defending a receiver against charges that he has performed his duties improperly. Filing depositions of Hallberg and Whyte.

May 10: Telephone call to Hubert Laugharn re his testimony as an expert witness as to reasonable value of our attorneys' fees. Dictating portion of draft of supplemental petition for allowance of fees to attorneys for Receiver. Telephone call to Jefferson Mann re his employment as an expert witness as to the reasonable value of Hallberg's services. Telephone call to Mrs. Hallberg re continuance of hearing to May 12, and evidence to be presented at that time.

4. Petitioners desire to call the Court's attention to the fact that certain of the additional legal services hereinabove referred to are in the nature of extraordinary, rather than ordinary, services. Into this category would fall the services rendered in connection with defending the Receiver and his attorneys against the objections filed herein by defendant Richman to the report and petitions of the Receiver and his attorneys for fees.

5. Petitioners allege that the reasonable value of their ordinary legal services as in Paragraph 3 above set forth, exclusive of the extraordinary [206] services hereinabove mentioned in Paragraph 4, is the sum of \$250.00. Petitioners do not wish to indicate any figure as representing the reasonable value of said extraordinary services, but prefer that this Court should determine in its discretion what additional amount should be awarded to peti-

tioners for the performance of said extraordinary legal services.

Wherefore, petitioners pray as set forth in their original petition for allowance of fees to attorneys for Receiver, filed herein on March 18, 1954, except that they pray that the order referred to in the prayer of said original petition fix and allow the further sum of \$250.00 as a reasonable attorneys' fee to FitzPatrick & Whyte and John Whyte, as attorneys for the Receiver herein, for the ordinary legal services heretofore necessarily performed by them in connection with the administration of the business and affairs of the former Richman Trust from and after March 18, 1954, to and including May 10, 1954; and that said order include such further sum as this Court may in its discretion determine to be a reasonable attorneys' fee for the extraordinary legal services necessarily performed by them in defending the Receiver and his attorneys against the objections filed herein on or about April 6, 1954, by defendant Richman to the report and petitions of the Receiver and his attorneys for fees.

Dated: May 11, 1954.

FITZPATRICK & WHYTE

JOHN WHYTE

/s/ By JOHN WHYTE,

Petitioners.

[207]

Duly Verified.

[208]

Acknowledgment of Service attached.

[209]

[Endorsed]: Filed May 12, 1954.

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES OF PLAINTIFF, LYDA TIDWELL, REGARDING PRE-TRIAL HEARING ON DISTRIBUTION OF FUNDS REMAINING UNDER CONTROL OF COURT

I.

Court has jurisdiction to settle accounts, declare rights of plaintiff and defendant Richman to fund remaining in Receiver's hands and to order disposition in accordance therewith.

Defendant Richman claims on Page 11 of his Objections to the Receiver's Report that he and Plaintiff Lyda Tidwell are entitled to apply to a Court of competent jurisdiction to initially and originally determine their respective rights to the funds remaining in the hands of the Receiver.

This proposition is incorrect. This Court has jurisdiction of the fund and jurisdiction to decide what persons are entitled to distribution of the fund, and in what amounts.

In *Pacific Bank vs. Madera Fruit, Etc. Co.*, 124 Cal. 525, plaintiff dismissed suit after a Receiver had been appointed and after the receiver had taken possession of certain assets. Thereafter the receiver filed his account and petition and asked the court to "settle the same, fix his [221] compensation, et cetera." Plaintiff then filed a motion to dismiss the account and petition on the ground that the court had lost jurisdiction. However, the motion was over-

ruled and this ruling was affirmed on appeal. The decision of the court notes that not only does the court retain jurisdiction to settle the receiver's account, but it also retains jurisdiction to dispose of the funds in the receiver's possession, saying, the receiver,

“* * * * is still amendable to the court as its officer until he has complied with its directions as to the disposal of the funds which he has received during the course of his receivership.”

The Pacific Bank case also states, at Page 527, “* * * If the court below lost jurisdiction of the case by virtue of the dismissal so that it could not settle the accounts of the receiver, nor make any disposition of the funds in his hands, how would the account be settled or the funds disposed of? The money on hand and collected by the receiver is in contemplation of law in the hands of the court to be disposed of as the law directs.” (Emphasis ours),

And,

“If the court in which the receiver was appointed cannot, after the dismissal of the case, settle and adjust the accounts of the receiver, to what jurisdiction will *be* resort? The dismissal of the case was the end of it as between the parties, but we think the court still retained the power to settle the accounts of its receiver and to direct the application of the funds in his hands.” (P. 527) (Emphasis ours.)

It is clear that the receiver is holding funds for disposal at the direction of the court. In Garniss

vs. Superior Court, 88 Cal. 413, 417, the court stated, quoting from Beach on Receivers, sec. 249,

“Though a receiver may be, and generally is, appointed upon the application of one of the parties interested in the property which he is to preserve, his holding is not merely for the benefit of such party, or of any other party; it is the holding of the court for the equal benefit of all persons who may be finally adjudged by the court to have rights in it;” (Emphasis ours.)

In State vs. Gibson, 21 Ark. 140, the court, referring to jurisdiction over a receiver after dismissal of the case, said,

“He was an officer of the court and subject to its orders in relation to the partnership effects placed in his hands as receiver until discharged by the court.”

To same effect, see Ireland vs. Nichols, 40 How. Pr. 85; Whiteside vs. Pendergast, 2 Barb. Ch. 471.

II.

Dispute between Plaintiff and Defendant, Frederick I. Richman, over funds remaining under control of court after payment of fees to Receiver and Receiver's attorney.

As this Court has been advised, plaintiff purchased all the right, title and interest of defendant in and to the assets known as the Richman Trust. The specific offer made by the defendant to plaintiff, which offer has been set out in the Objections of both plaintiff and defendant to the petition of

the Receiver for approval of his account, makes provision for the sale of the properties to the plaintiff and then, subject to certain terms and conditions, any moneys remaining in the hands of the Receiver are to be divided equally. In other words, if there were no dispute between plaintiff and defendant at this time, the Court would divide equally between them the funds remaining under the control of the Court after the deduction therefrom of fees to be paid to the Receiver and his attorneys. However, a dispute has arisen between plaintiff and defendant as to the meaning and interpretation of the written offer made by defendant. Hereinbelow will be set out the claims in dispute, and the law pertaining thereto. [223]

1. Plaintiff was forced to pay out of her own funds the real property taxes on the five apartment houses in the Trust for the period January 1, 1954 through June 3, 1954, in the amount of \$14,858.31. Plaintiff claims that taxes for the months of January and February, 1954, should have been borne equally by plaintiff and defendant. The taxes pro-rated for these two months amount to \$4,952.77.

The offer of defendant provides in paragraph 4 thereof as follows:

“4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 on or until the re-appointment of a receiver as might occur under 7(c) hereof.”

Paragraph 5 of said offer provides as follows:

“5. The receiver shall file his report and after the payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman.”

A reading of paragraphs 4 and 5 above demonstrates without question that Mrs. Tidwell was to assume all obligations beginning March 1, 1954, but that all “operating obligations” of the Richman Trust for the months of January and February, 1954, were to be borne equally by the parties. While there seems to be no question as to the meaning of the above stated paragraphs in defendant's offer, still if there be any ambiguity, it must be resolved against defendant since he was the one who made the offer. Williston on Contracts, Revised Edition, Volume 1, Section 37, Page 100, states as follows:

“* * * (a) Ambiguous words in an obligation should be interpreted most strongly against the party who used them.”

And again in Volume 3 of Williston, *supra*, Section 621, Page 1788:

“Since one who speaks or writes, can by exactness of expression more exactly prevent mistakes in meaning, than one with whom [224] he is dealing, doubts arising from ambiguity of language are resolved in favor of the latter;”

See Restatement of Contracts, Section 236(d). Also in accord, *Preston vs. Herminghaus*, 211 Cal. 1; *Couture vs. Ocean Park Bk*, 205 Cal. 338.

It has been held that operating obligations or expenses include taxes. See *Schmidt vs. Louisville C.&L. Ry. Co.*, 84 S.W. 314, 315, 119 Ky. 287; *Michigan Public Utilities Com. vs. Michigan State Telephone Co.*, 200 N.W. 749, 751, 228 Mich. 658; *Fleischer vs. Pelton Steel Co.*, 198 N.W. 444, 447, 183 Wis. 151.

2. Mrs. Tidwell paid from her separate funds water, gas, telephone and electric bills for a portion of February, 1954, in the sum of \$1,877.50. Since there is no question but that such utility bills are operating obligations, plaintiff contends that this said amount should be equally borne by the parties.

3. Two catalytic units were ordered by defendant Richman during his tenure as agent for the Trust for two of the apartment houses. These were installed during the administration of Mr. Richman and the receiver. Mr. Richman signed a contract to pay \$1,329.40 for each of the units, or a total of \$2,658.80. These catalytic units were ordered because of a dispute with the Air Pollution Control District, or some such similar agency, and constituted an operating obligation of the Trust prior to March 1, 1954. Here again plaintiff contends that defendant should share equally in this cost.

4. Defendant Richman claims that the Receiver had collected certain rents between February 25th and February 28th, 1954 which should have been retained by him so that defendant Richman would share in the same to the extent of one-half thereof. Instead, these moneys were paid over to Lyda Tid-

well. Some of these moneys collected by the Receiver represented February, 1954, rents, and some represented March, 1954, rents. However plaintiff Lyda Tidwell contends that \$4,499.29 worth of March, 1954, rents were collected by the Receiver and retained by him. Plaintiff Tidwell contends that she is entitled to all of the March, 1954, rents, even though collected in February.

Here again an interpretation of paragraphs 4 and 5 of the offer [225] as above quoted should be interpreted to mean that all obligations existing up to February 28, 1954 and all income for that same period belongs to the parties jointly, but that all obligations from March 1, 1954, must be assumed by plaintiff Tidwell, and it therefore follows that she is likewise entitled to all receipts for March, 1954, and subsequent months.

5. Pursuant to the written offer of defendant Richman above referred to and the unqualified acceptance of said offer by the plaintiff Lyda Tidwell, the parties entered into an escrow at California Bank and the escrow stated that internal revenue stamps in the amount of \$577.50 and seller's escrow fees in the amount of \$329.00, or a total of \$906.50, were to be borne by the buyer, Mrs. Tidwell. However, the escrow also stated "These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me (Lyda Tidwell) and with which agreement California Bank is not to be concerned."

It very often happens that parties may enter into

an involved agreement of purchase and sale and then go into escrow and file escrow instructions. If the escrow instructions are inconsistent with the prior written agreement, the question arises as to which is to control. This is a question of interpretation and the prior agreement and the escrow instructions must be read together. If the escrow instructions specifically state that the prior agreement is the controlling one then, of course, the prior agreement controls and not the escrow instructions. In *King vs. Stanley*, 32 Cal. (2d) 584, on hearing after 189 Pac. (2d) 46, the court stated that escrow instructions which are mere customary and expected directions to the escrow company do not take the place of the prior written agreement but merely carry it into effect.

In *Pigg vs. Kelley*, 92 Cal. App. 329, it was held that where a written agreement of sale and escrow instructions connected therewith show by their terms that they refer to the same sale, the two instruments must be construed together under Civil Code 1642 to ascertain the whole contract between the parties.

In *Womble vs. Wilbur*, 3 Cal. App. 527, it was held that where parties entered into a written agreement and in pursuance thereof entered into [226] an escrow whereby certain instructions were given to the escrow company, it is a question of interpretation of contracts and the surrounding circumstances as to whether the former agreement or the escrow instructions controlled, in case of any inconsistency. The court points out that the parties

can agree that the previous written agreement is not to be superseded by any escrow instructions.

Of course, an interpretation of the written offer of Frederick Richman shows without question that since he was selling his interest in the assets of the Richman Trust, he naturally is obligated to pay the regular seller's fees such as revenue stamps and seller's escrow fees. There is no reason why the defendant should not therefore pay the said fees which were paid by plaintiff out of her own funds in escrow.

6. Defendant Richman claims that the Receiver should not have turned over to the plaintiff the petty cash fund of \$785.00 thereby the defendant would seek to obtain one-half of that amount. However, defendant's offer shows clearly that he was not selling five apartment houses but rather all of his right, title and interest in and to the assets of the former Richman Trust. There is no doubt that the petty cash fund existing in a business or a trust is an asset of that business or trust and therefore Lyda Tidwell is entitled to the full amount of the petty cash fund as the purchaser.

7. Defendant Richman also claims that he is entitled to the payment of his agent's fees for the month of November, 1953, in the amount of \$3,-104.33. There is absolutely no merit whatsoever in this contention. It should be borne in mind that the Trust was terminated by order of court and a judgment of termination of said Trust was entered. The Trust was terminated by reason of undue influence and fraud in the execution of the Trust and the

effect of the judgment was to wipe out the Trust from the beginning as a void trust. In that stage of the legal proceedings of the above entitled case plaintiff had a claim against defendant Richman for excessive fees which the defendant had charged over a period of almost eight years. The defendant had a substantial claim in the approximate amount of \$50,000.00 which, by virtue of the agreement entered into by the parties for settlement, was surrendered, and both parties under [227] paragraph 1 of the offer were required to mutually release each other of any and all claims, known or unknown, that they might have against the other from the beginning of the world to the time of entering into the agreement. Since the Trust no longer existed the only claim which Frederick Richman might have against the plaintiff personally was for services rendered her in the administration of her property. This claim he surrendered by executing a release in her favor. It is true that paragraph 5 provides for the "payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, * * *". However, a reading of the complete contract would demonstrate forcibly that no obligation to defendant Richman was to remain outstanding, and if there be any inconsistencies in this offer, the inconsistencies must be resolved against defendant.

8. Defendant Richman claims that the Receiver paid the March, 1954, mortgage payment on the Oliver Cromwell trust deed in the sum of \$2,027.25.

If that be true that payment should have been made by plaintiff Tidwell from her own funds and defendant Richman would be entitled to a credit of one-half that amount. It is respectfully suggested that the parties attempt to stipulate as to as many of the facts as possible in the pre-trial hearing so that the trial itself will be reduced to an argument of law rather than a trial of facts coupled with an argument of law.

Respectfully submitted,

MARTIN, HAHN & CAMUSI,

/s/ By WILLIAM P. CAMUSI,

Attorneys for Plaintiff, Lyda
Tidwell.

[228]

[Endorsed]: Filed June 16, 1954.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: June 21, 1954, at Los Angeles, Calif.

Present: Hon. Ernest A. Tolin, District Judge;
Deputy Clerk: Wm. A. White; Reporter: Virginia
Wright; Counsel for Plaintiff: Robert Powsner;
Counsel for Defendants: Joseph Enright.

Proceedings: For pretrial hearing re division of
moneys held by Receiver. (In Chambers.)

Counsel for plaintiff and defendants state claims
to be determined upon division of moneys held by
Receiver.

It is Ordered that counsel file stipulation as to those items agreed upon and that if stipulation cannot be reached, Court will hear oral argument.

Court will receive stipulation or hear oral argument on July 6, 1954, 10 a.m.

Filed eight exhibits for defendants.

Defts.' Ex. A to H incl. are received into evidence.

EDMUND L. SMITH, Clerk,

/s/ By WM. A. WHITE, Deputy Clerk. [229]

[Title of District Court and Cause.]

MEMORANDUM TO COUNSEL RE DISPOSITION OF FUNDS REMAINING UNDER CONTROL OF COURT AND ALLOWANCE OF FEES

The problems remaining before the Court are those arising from settlement of the Receiver's First and Final Report and Account, the Objections thereto, the various items to be considered in payment of the Receiver, and distribution of the monies remaining under control of the Court. General releases have been executed by the parties, Plaintiff's release running to Defendant and certain other persons, and Defendant's release running to Plaintiff. The Richman Trust has not been released and must discharge its obligations. Neither has the Receiver been released.

Defendant has asserted that he is entitled to \$3,104.33 remaining unpaid for services rendered

by him under the Trust indenture. The Court has found that the [230] Trust was procured by undue influence and has allowed Plaintiff to exercise her privilege of voiding it although it was not void ab initio but voidable only. As it has been voided, Defendant is not entitled to management fees as fixed in the contract by which the Trust was established because that contract has been set aside and the measure by which Defendant's fees were determined during the life thereof is no longer applicable. He is entitled to compensation from the Trust estate upon a quantum meruit basis. The \$3,104.33 asked is based upon a charge of ten per cent of gross income of the Trust during a particular period of time. There was evidence that five per cent was a proper property management fee during the time involved. Other evidence placed the reasonable value of such services somewhat higher. The Court believes that six per cent of the income is a proper quantum meruit allowance under all the circumstances of this case although if the case were one of fixing fees for a long rather than a short term, five per cent would have been indicated. The Court does now find that the fees for the period in question shall be allowed at the rate of six per cent of the gross income of the Trust during the period in question instead of at the rate specified in the agreement which has been set aside.

Plaintiff has stipulated in the Escrow Instructions that all of the seller's costs and expenses of escrow, revenue stamps and recording, be at her expense. She cannot now avoid that written under-

standing by claiming inferences from an agreement that do not clearly flow from that written agreement. In preparation of the order hereon, counsel will recognize that it was the obligation of Mrs. Tidwell to pay for the revenue stamps and the seller's escrow fee. [231]

It appears that Plaintiff has paid \$1,877.50 from her own fund in discharge of utility bills for water, gas and electricity provided to the properties of the former Trust during the time that such properties were being managed by the Receiver. In ordinary course, these bills would have been paid by the Receiver as they were incurred by him. Plaintiff is entitled to recover \$1,877.50 from the funds on hand as reimbursement of this item.

It appears that the various rents collected belong to Plaintiff because they were rentals which were being paid in advance for occupancy during the term of her ownership of the properties. Even had there been proof of collection by Mrs. Tidwell or her agent of some past due rent originally payable to the Trust or its Receiver, still any such rent would have become payable to her upon the making of the agreement because she bought all of Defendant's interest in the assets of that Trust. The Court finds that the agreement memorialized by Joseph T. Enright's letter to Laurence B. Martin, dated February 19, 1954, as adopted in writing by Frederick I. Richman and Laurence B. Martin's letter of February 25, 1954, and as adopted in writing by Mrs. Tidwell, contemplated and agreed that what should be acquired by the purchaser would be “* * * Mr. Richman's undivided half interest in

the assets of Richman Trust* * **". If Mrs. Tidwell has collected monies which were assets of the Richman Trust, then she has received no more than what she purchased. If she has received rents which were not due the Richman Trust, it must follow that these are rents which are due her. She is entitled to have the funds now under control of the Court divided without charging her for what she has received in this regard. [232]

Before the Receiver was appointed, Defendant commenced negotiations for the purchase of certain air pollution control equipment referred to as catalytic units for installation in the Canterbury and Oliver Cromwell properties. The question is now presented as to who should pay for these units. They were acquired by the Receiver during the period of his receivership but in doing so, he merely carried out a plan which had been put in motion by Defendant. These units were assets of the Trust which, under the terms of the letter agreement, were sold to Plaintiff. The obligation to pay is the obligation of the Receiver as the Receiver incurred the expense during the administration of his Trust and Plaintiff was not a party to the purchase.

The petty cash fund is an asset of the Richman Trust. Mrs. Tidwell has purchased all of Defendant Richman's interest in that Trust and that includes the petty cash fund which existed simply as an operating incident of each individual apartment house so that the resident managers would have available small sums of money for the purposes that

are common to the day-to-day business transacted by resident apartment house managers.

The Court finds that real property taxes were an operating obligation of the Trust. Whereas Mrs. Tidwell was to assume (and did assume) the operating expenses of the Trust after a tax item in the sum of \$4,952.77 had accrued, even though the billing date had not arrived, it is proper that she be reimbursed what she has paid out of her own funds in payment of an operating expense which had arisen before she acquired her fee simple title and assumed by express agreement the operating expenses as of a date after the time period in question. [233]

The March 1st installment upon a note, secured by a deed of trust, which was paid on February 27th, was paid for the benefit of the Plaintiff. Although at the time the Receiver paid it, he had every reason to believe it would be a Receiver's obligation on the due date, and insofar as the Receiver's conduct is concerned, it was not unwise to pay a definite obligation three days in advance of its due date, equity will require that it be charged to the person for whose benefit it now appears the payment was made (a circumstance not foreseeable on February 27th). On that day it appeared the Receiver would remain in possession. He did not, and on the day the payment fell due Mrs. Tidwell was in charge and the benefit of the payment was hers.

The Receiver has not prayed for a specific sum in compensation for his services but has set forth

in detail what his services consisted of and prays for reasonable fees. The Court bears in mind that Defendant has testified that ten per cent of the gross income was a reasonable management fee when Defendant rendered the management service. In procuring the contract with Plaintiff for that fee, there was an over-reaching and undue influence. That fee was excessive. The Court bears in mind, also, that there is evidence in the record that various percentages including five per cent and six per cent would be a reasonable management fee. The Receiver in this instance acted as a property manager with the obligations of full trustee and of an officer of the Court. Mr. Richman, with whom he had to deal, is a person given to hostile and aggressive attitudes. It is evident that he exercised these in his relations with the Receiver. The Receiver was obliged to go through the problem of setting up his own management plan. [234] He was only allowed to execute the plan for a brief period before the receivership was abruptly terminated. He was placed in possession hurriedly and he was terminated abruptly. It then became necessary for him to file an accounting, and the accounting procedure was exhausted to its ultimate in searching into the conduct of the Receiver during and even before his stewardship. He spent several days in Court defending the administration of his trust and undergoing a most critical and insulting scrutiny of his every act and omission in his administration. The Receiver's fee is fixed in the sum of \$6,000.00, that being the reasonable value of his services, with some

consideration given to the greater than usual vexation which was visited upon him and the labors of making up his accounting and explaining and defending it in Court. The Court finds it to be a true and correct account.

The Receiver had the services of an attorney who was employed with the approval of the Court. Except for attendance at and participation in Court proceedings on the Receiver's account, the services were of a routine character. The total sum of attorney fees allowed is \$1,000.00, this to include all ordinary and extraordinary services for which fees have been prayed. It is noted that the total of Receiver's and attorney fees is approximately \$2,500.00 less than the fees which would have been enjoyed by Defendant while handling a like sum of money while he was in charge, and he also had a right to incur legal expenses for which he could be compensated over and above the fixed percentage. Further, the Court's Receiver was in charge for a three-month period whereas Defendant had adroitly, and by over-weaning and deceptive means, obtained a contract for a lifetime. [235]

Counsel for Plaintiff will prepare an order for settlement under Rule 7.

Dated: This 5th day of October, 1954.

/s/ ERNEST A. TOLIN,

United States District Judge. [236]

[Endorsed]: Filed October 5, 1954.

[Title of District Court and Cause.]

MEMORANDUM TO COUNSEL

Whereas John Whyte, Attorney for Roy E. Hallberg, the Receiver herein, has protested to the Court that the award of fees to the Attorney for the Receiver was inadequate, and the Court has thereafter summoned all parties and counsel before it and heard further argument and fully re-considered the matter of fixing attorney fees for the Attorney for the Receiver:

The Court does now direct that when the attorney for plaintiff prepares and submits an order upon settlement of the Receiver's account, that such order shall provide that the fees for John Whyte as Attorney for Roy E. Hallberg, Receiver herein, be fixed at the sum of One Thousand Eight [237] Hundred Dollars (\$1,800.00), and that the Receiver be authorized and directed to issue his check to said John Whyte for that sum.

Dated: October 22, 1954.

/s/ ERNEST A. TOLIN,
United States District Judge. [238]

[Endorsed]: Filed October 22, 1954.

In the United States District Court, Southern District of California, Central Division

No. 13,742-T

LYDA TIDWELL, et al.,

Plaintiffs,

vs.

FREDERICK I. RICHMAN, etc. et al.,

Defendants.

ORDER IN RE SETTLEMENT OF RECEIVER'S ACCOUNT, Fees and Distribution of Funds in Hands of Receiver. (Under Local Rules 7 of the U.S. District Court for the Southern District of California.)

This matter having come on for final hearing on the 27th day of September, 1954, on the First and Final Report and Account of the Receiver, Petition for Receiver's Fees and Petition for Receiver's Attorney's Fees and distribution of the balance remaining in the receiver's hands after payment of his fees and those of his attorney, plaintiff appearing by her attorneys, Martin, Hahn & Camusi, by William P. Camusi, defendant Frederick I. Richman appearing by his attorneys, Brady, Nossaman & Paulson and Joseph T. Enright, by Joseph T. Enright, and the receiver Roy E. Hallberg having appeared through his attorney, John Whyte, and oral and documentary evidence having been previously submitted to the court, and good cause appearing therefor, the court now makes its findings and order therein:

I.

This Order arises as the result of the final settlement of a suit in this court to cancel an intervivos trust and for other relief, brought by [243] plaintiff, Lyda Tidwell, against defendant, Frederick I. Richman, and others, United States District Court file No. 13,742-T. After trial of said matter on the claim of fraud and undue influence in the inception of the trust, this court gave judgment in favor of plaintiff and against defendant, and ordered that said trust be cancelled and dissolved, and this court appointed Roy E. Hallberg as receiver on December 1, 1953, to operate and conserve the assets of said trust pending a final determination of the matter by way of final judgment or settlement between the parties. The court approved the employment by the receiver of an attorney, John Whyte, to render legal services to said receiver in connection with the administration of said trust.

II.

On February 26, 1954, pursuant to stipulation of the parties, the court ordered that the receiver be relieved of his active duties of management, control and possession of the trust assets as of 5:00 o'clock p.m., Sunday, February 28, 1954, and that he give over control and possession to plaintiff, Lyda Tidwell, of all the assets of the said trust excepting money in bank and under the control of the said receiver.

The said Order of this court, dated February 26, 1954, was made because the plaintiff and defendant

had arrived at an agreement for settlement of the entire action. The settlement of the entire action between plaintiff and defendant Richman arose out of an offer made by defendant Richman to plaintiff by letter dated February 19, 1954, and as a result of said offer, plaintiff purchased all of defendant Richman's right, title and interest in and to the assets of said trust.

III.

Pursuant to stipulation, plaintiff took over possession of the assets of the trust, with the exception of money in bank and under the control of the receiver, at 5:00 o'clock p.m., February 28, 1954. In pursuance of the settlement of the action as above described, dismissal of the action was entered, this court, however, retaining jurisdiction of the cause for the purpose of settling the accounts of the receiver, fixing the fees of the receiver and his attorney, and disposing of any balance of the funds remaining [244] in the hands of the receiver after making provision for the payment of all the receiver's operating expenses and the fees of the receiver and his attorney.

IV.

The first and final report of the receiver and petition for allowance of fee to receiver, together with petition for allowance of fees to the attorney for the receiver, were filed. After allowance for receiver's fees and fees for his attorney, plaintiff and defendant are each entitled to one-half of the funds remaining in the hands of the receiver. However, both plaintiff and defendant Richman make addi-

tional claims against said funds remaining because of certain charges which the receiver paid, or failed to pay. On or about February 28, 1954, the receiver paid the March installment due on the trust's promissory note secured by a trust deed on the Oliver Cromwell Apartment house in the sum of \$2,027.27. The receiver did not pay defendant Richman any fee for services rendered by said defendant as agent for the trust for the month of November, 1953, and defendant Richman has never been compensated for said services.

Also, the receiver, having turned over the assets and books and records of the trust on February 28, 1954, did not pay certain obligations incurred prior to, and during, his administration. The receiver failed to pay certain utility bills incurred during the month of February, 1954, in the sum of \$1,877.50. The receiver also failed to pay any of the real property taxes on trust assets for the months of January and February, 1954, which taxes amount to the sum of \$4,952.77. The receiver further failed to pay for two catalytic units in the sum of \$1,300.00 each, or \$2,600.00 for both units, which catalytic units were contracted for by defendant Richman and installed on the apartment houses during the receiver's administration. Plaintiff was not a party to the purchase of the catalytic units. Plaintiff paid the bills for utilities, taxes, and for the catalytic units from her own funds.

The first and final report of the receiver is found to be full and correct.

Now, therefore, it is hereby ordered, adjudged

and [245] decreed that the said report as filed by the receiver is a true and correct account and the court finds that the receiver has in his possession, after deducting the credits to which he is entitled, a balance of \$20,697.71, consisting entirely of cash, and said account and report is approved, allowed and settled as rendered; that said receiver, Roy E. Hallberg, is hereby discharged from further duties and responsibilities as receiver herein and his bond exonerated; the reasonable value of the services of Roy E. Hallberg as receiver is the sum of \$6,000.00, which the Court finds to be the reasonable value of said services, and his fees are hereby fixed at the sum of \$6,000.00; the reasonable value of the services of John Whyte, as attorney for the receiver in this matter, is the sum of \$1,800.00, and his fees are hereby fixed at the sum of \$1,800.00, which the Court finds to be the reasonable value thereof.

There remains on hand after allowance for payment of receiver's fees and the fees of his attorney, the sum of \$12,897.71 which sum is payable to plaintiff and defendant Richman as their interests appear.

It is further ordered, adjudged and decreed that from the balance of funds remaining in the hands of the receiver in the sum of \$12,897.71, defendant Richman is entitled to the following credits: A reasonable fee for services rendered by him as agent for the dissolved trust, which fee is fixed at six per cent (6%) of the gross revenues for the month of November, 1953, which revenues aggregated \$31,043.33, or a fee of \$1,862.60, one-half of which was

the obligation of plaintiff; and defendant Richman is entitled to a credit of one-half of said mortgage payment made for the month of March, 1954, said one-half amounting to \$1,013.64, or a sum total of credits of \$1,944.94.

It is further ordered, adjudged and decreed that from the balance of the funds remaining in the hands of the receiver in the sum of \$12,897.71, plaintiff, Lyda Tidwell, is entitled to the following credits: One-half of the said utility bills paid by her, said one-half amounting to \$938.75; one-half of the said taxes paid by her, said one-half amounting to \$2,476.38; one-half of the cost of the catalytic units paid by her, said one-half amounting to \$1,300.00, or a sum total of credits of \$4,715.13. [246]

It is further ordered that the receiver reimburse himself from the monies in his possession to the extent of \$89.20, paid out by him for copies of the depositions used on the hearing herein.

It is further ordered, adjudged and decreed that the balance of said fund remaining, in the amount of \$6,237.64, after allowance for receiver's fees, attorneys' fees and said credits to both plaintiff and defendant Richman, be divided equally between plaintiff and defendant Richman in the amount of \$3,118.82 each. Plaintiff is entitled to receive from said fund the total sum of \$7,833.95, and defendant Richman is entitled to receive from said fund the total sum of \$4,974.56.

It is further ordered, adjudged and decreed that plaintiff is not entitled to any credits for expenses

incurred by her in said escrow on behalf of defendant Richman as the seller therein.

It is further ordered, adjudged and decreed that defendant Richman is not entitled to any credits for any rents collected by plaintiff, nor is defendant Richman entitled to any credit for the said petty cash fund paid over to plaintiff.

It is finally ordered that neither plaintiff nor defendant Richman is entitled to any credit against said fund except for those specifically hereinabove granted.

The receiver is ordered to disburse the funds in his hands in accordance herewith, except as this Court or the Appellate Court may award costs or fees to the receiver and his attorney in connection with any appeal.

Dated this 19th day of November, 1954.

/s/ ERNEST A. TOLIN,
Judge.

[247]

Affidavit of Service by Mail attached. [248]

[Endorsed]: Filed and entered Nov. 19, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that defendant, Frederick I. Richman, hereby appeals to the Ninth Court of

Appeals from the Order and Judgment In Re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver, docketed and entered the 19th day of November, 1954.

Dated: December 15, 1954.

BRADY, NOSSAMAN & PAULSTON
and

JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT, [249]

Acknowledgment of Service by Mail attached.

[Endorsed]: Filed December 15, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that plaintiff, Lyda Tidwell, hereby appeals to the Ninth Circuit Court of Appeals from that portion of the Order In Re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver, docketed and entered the 19th day of November, 1954, which awards the sum of \$4,974.56, or any part thereof, to defendant, Frederick I. Richman, and which limits the distribution to plaintiff, Lyda Tidwell, to the sum of \$7,833.95. Plaintiff does not appeal from that portion of the judgment awarding reasonable fees for services rendered by the Receiver and the Receiver's attorney.

Dated: December 17, 1954.

MARTIN, HAHN & CAMUSI

/s/ By WILLIAM P. CAMUSI,

Attorneys for plaintiff and
Appellant, Lyda Tidwell.

[252]

Affidavit of Service by Mail attached.

[253]

[Endorsed]: Filed December 20, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund I. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 261 inclusive, contain the original

Memorandum of Decision;

Order Appointing Receiver;

Ex Parte Motion for Order Staying Proceedings;

Oath of Receiver;

Bond of Receiver;

Notice of Motions re Appointment of a Distributing Receiver;

Petition for Authority to Employ Counsel;

Order Authorizing Receiver to Employ Counsel;

Affidavit of Service by Mail of Order Authorizing Receiver to Employ Counsel;

Petition for Authority to Pay Christmas Bonuses;

Order Authorizing Receiver to Pay Christmas Bonuses;

Affidavit of Service of Order Appointing Receiver;

Petition for Authority to Renovate Individual Apartments, etc.;

Consent to Petition for Authority to Renovate Individual Apartments, etc.;

Answer to Petition of Receiver for Authority to Renovate and Consent of Plaintiff;

Judgment for Revocation and Avoidance of Trust, and Appointment of Receiver;

Order Extending Time Within Which Receiver Must File His First Report and Petition for Instructions, and Supporting Affidavit;

Notice of Application and Motion for Permanent Receiver;

Statement of Reasons and Points and Authorities in Support of Application and Motion for Permanent Receiver;

Stipulation filed Feb. 26, 1954;

Order filed Feb. 26, 1954;

Petition for Allowance of Fees to Attorneys for Receiver;

First and Final Report of Receiver and Petition for Allowance of Fee to Receiver;

Notice of Hearing on (1) First and Final Report of Receiver, (2) Petition for Allowance of Fee to Receiver, and (3) Petition for Allowance of Fees to Attorneys for Receiver;

Affidavit of Service by Mail of Notice of Hearing;

Dismissal With Prejudice;

Objections and Answer to Report and Petitions of Receiver and his Attorney for Fees;

Objections to First and Final Report of Receiver;

Plaintiff's Reply to Objections of Defendant Frederick I. Richman;

Plaintiff Lyda Tidwell's Points and Authorities in Support of her Objections and her Reply to Defendant Richman's Objections;

Petition to Disqualify and Authorities;

Supplemental Petition for Allowance of Fees to Attorneys for Receiver;

Pre-trial Memo, Receiver's Fund;

Memorandum of Points and Authorities of Plaintiff, Lyda Tidwell, Regarding Pre-trial Hearing on Distribution of Funds Remaining Under Control of Court;

Memorandum to Counsel re Disposition of Funds Remaining Under Control of Court and Allowance of Fees;

Memorandum to Counsel;

Statement of Objections of Roy E. Hallberg, as Receiver, etc., to Plaintiff's Proposed Order in re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver;

Order in re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver;

Notice of Appeal to the Ninth Court of Appeals by Defendant;

Designation of Contents of Record on Appeal, by Defendant;

Notice of Appeal to the Ninth Circuit Court of Appeals, by Plaintiff;

Designation of Contents of Record on Appeal, by Plaintiff;

Appellee's Designation of Portions of Record, Proceedings, and Evidence to be Contained in Record on Appeal;

Petition for Extension of Time for Reporter Under Rule 73g and Order; and a full, true and correct copy of the Minutes of the Court on November 30, 1953; December 2, 3, 4, 1953; April 12, 1954; June 21, 1954; which, together with the original Defendant's Exhibits A-H inc. on the Pre-trial hearing June 21, 1954; and the original Receiver's Exhibits 1-4 inc., and Defendant's Exhibits A-L inc. on the hearing re payment of fees to the Receiver and his attorney; the Depositions of John Whyte and of Roy E. Hallberg, each taken April 22, 1954; and 17 volumes of Reporter's Transcripts of Proceedings had on Nov. 30, 1953; Dec. 1, 2, 3, 4, 1953; Jan. 15, 1954; April 12, 1954; May 12, 1954; May 13, 14, 17, 1954; June 7, 8, 18, 21, 1954; Sept. 27, 1954; Oct. 12, 1954; all in said cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid by appellants.

Witness my hand and the seal of said District Court, this 25th day of March, 1955.

[Seal] EDMUND L. SMITH,
Clerk

/s/ By THEODORE HOCKE,
Chief Deputy

In the United States District Court for the Southern District of California, Central Division

No. 13,742-T—Civil

LYDA TIDWELL, etc., Plaintiff,
vs.

FREDERICK I. RICHMAN, et al., Defendants.

TRANSCRIPT OF PROCEEDINGS

Los Angeles, Calif., Monday, Nov. 30, 1953

Honorable Ernest A. Tolin, Judge Presiding.

Appearances: For the Plaintiff: William P. Camusi, 530 West Sixth St., Suite 701, Los Angeles, Calif. For the Defendants: Joseph T. Enright, 541 South Spring St., Los Angeles 13, Calif. [1*]

(The following proceedings were had in chambers:)

The Court: Let's come on the record. Mr. Camusi is here for the plaintiff, and Mr. Enright for

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

the defendant. The court has filed a memorandum of decision in the case.

How many copies would you like, Mr. Enright?

Mr. Enright: If there could be two, I would appreciate it, but, if not, I can have copies made.

The Court: I will hand you two.

Mr. Camusi: Do you have two for me?

The Court: Yes. If anyone needs three, they can have three, because I asked Miss Leland to run off a number of copies.

Mr. Enright: I will take three. Mr. Nossaman will want one.

Mr. Camusi: And I could use another one, if you have it, Judge.

The Court: All right.

(The copies were handed to counsel.)

The Court: It has been, as you will note from that, and as the clerk probably has already told you, the court's conclusion that the plaintiff should prevail and that a receiver should be appointed. So we have called up the application for receivership which has been continued from time to time, acting [2] on it in chambers without there having been a renewal of the motion.

Receiverships are always complicated somewhat if they start in the middle of an accounting period of some sort, and while it isn't a provident case of management to wait until the beginning of a new calendar year, to begin a receivership on the first day of a calendar month sometimes simplifies the accounting problems and the difficulties which in-

here in making adjustments and prorations, and so forth.

Although this memorandum is almost 19 pages long, a great deal has not been stated, and some of it, due to the desire of the court to avoid a long period of submission, has not been elaborated upon to the extent that it was thought out by the court, because to articulate sometimes the thoughts which would be set forth in detail in a memorandum would take more time here than would be consistent with a short submission period.

Now, we called Mr. Camusi and asked him to draw a suggested order for the appointment of a receiver, and I will tell you tentatively what the court's idea was with respect to it.

I have on file here a great number of names of lawyers, some of them highly reputable and quite experienced in receivership matters, who have come in from time to time and suggested that they would like to have receivership appointments. [3] But it has seemed to me that it would probably be more in keeping with the requirements of this case to appoint someone not a lawyer, but who had a particular acquaintance with the problems which inhere in the management of income properties.

I have asked for the names of some such people from various bankers, not acquainting them, of course, with the particular case, and I have interviewed a number of them. I have also thought of people of whom I have known by reputation and slight acquaintance, who are not in the practice

of law, thinking that with Mr. Richman being an attorney, it would perhaps be well to avoid having a lawyer here who might have had either pleasant or adverse experience with him, and I have come to a tentative selection of a man named Mr. Roy E. Hallberg.

Mr. Hallberg was for some years associated with a property management operation in Chicago, and has considerable acquaintance and experience in that type of work. Since coming to California he has held various positions with different types of corporations, and has been engaged in the management of property for elderly relatives who have considerable apartment property in Southern California.

I called him and found that he is available, and I asked him to come in here at about 2:00 o'clock today, so that counsel could meet him. It was my intention to appoint him, [4] and inasmuch as the receiver ordinarily needs counsel, to suggest to him that he take legal counsel, not from any of the attorneys in this case, but that he select an attorney of his own choice, whom the court would approve if he selects any reputable member of the bar. He asked me if he could consult for his legal advice, except such as the receiver takes from the court, with an attorney who has until very recently been with O'Melveny & Myers, which I understand is the firm that has handled Mr. Hallberg's own legal work. I don't know which member of the staff of O'Melveny & Myers he has in mind, but I do understand that the man either has left or is about to

leave that firm for the purpose of setting up a private practice of his own.

Now, does anyone have an objection to Mr. Hallberg, or do you want to question him, or do you have an objection to his employment of counsel?

Mr. Camusi: Plaintiff's position, your Honor, is that we don't know Mr. Hallberg, but I gather your Honor has made quite an elaborate investigation, and it is our desire that there be some competent man unknown to either side or to counsel, and so with that statement, why, we are willing to go on the court's opinion of the man it has chosen.

The Court: I have known Mr. Hallberg in a rather offhand way for some time, but he is not a particular friend or even a close acquaintance, although his name has come up in [5] connection with the consideration of other names. I talked the other day to Mr. Paul W. Elmquist, who is the head of Paul W. Elmquist Company, and it turns out, I think, that he is about as well qualified as Mr. Hallberg, but he has had various associations here which might turn out to, as you say, ring a bell with him, and I had felt finally, after talking with these various people, that it would be better to have some one who, while knowing property management, had never engaged in it except as to his own and his immediate relatives' property in this locality.

I am hopeful the form of the order you have prepared will merely call on him to hold matters in status quo until the judgment, which I hope will be entered with as reasonable promptness as you

can get it ready, will be final, so that there will not be a liquidation of assets.

I had in mind, first, calling upon some of the professional receivers about town, and then it occurred to me that the usual professional receiver whom we know in this locality has ordinarily had as the objective of receivership the liquidation of an estate rather than the preservation of it and simple distribution, and I didn't want to have a person here who had in mind turning property into cash or changing the form of the corpus of the estate materially. I think it ought to be kept as nearly as possible in status quo until judgment becomes final. [6]

I would like to hear some comment from counsel as to what would be an appropriate bond.

Mr. Enright: The evidence shows the amount of moneys being received, gross moneys being received each month. The evidence further shows that the receipts had been expended each month in payment of operating expenses or reduction of Union Bank indebtedness. The evidence further shows that towards the end of the trial defendant presented testimony that there was an outstanding secured obligation upon one of the apartment houses, the name of which I recollect to be the Oliver Cromwell—if it isn't that one, it is some other one—

Mr. Camusi: That is correct.

Mr. Enright: —and that the defendant desired to apply the accumulating cash upon that indebtedness. The installments payable under the loan contract permitted of advance payments.

The evidence further showed that Internal Revenue's investigation had resulted in its objecting to the rates of depreciation theretofore taken by the trustees or the managing agent.

The sum total of this status of the evidence is that there will be no substantial amount of cash on hand from month to month, other than the monthly collections, and, therefore, it would seem to me that all parties should endeavor to avoid expense, and to fix the bond at an amount of [7] not exceeding one and one-half times monthly collections. Those being the only personal property, except a few notes receivable, and I can't call those from memory, it would seem to me that the bond should be commensurate with the amount—not the amount, but the value of the property that someone might, and we certainly do not conjecture someone might, appropriate. That is my thought as to the bond.

The Court: I had been thinking loosely in the way in which probate bonds are fixed, and that a bond should be sufficient to cover the value of the readily liquidatable assets, where it would not call for a title search, or something of that nature.

Mr. Enright: That is right.

The Court: So how much money would a person acting in this capacity have in his possession at any one time?

Mr. Enright: I don't see how it could exceed thirty-five to forty thousand dollars monthly in rental collections.

Mr. Camusi: That is what the gross rental col-

lections are. In probate practice I believe they take one year; they take a whole year of income. But that would be an awfully high bond in this case, and I agree with Mr. Enright. I don't think we should follow the probate rule in that respect.

Now, I don't know, but I was thinking of a bond somewhere between fifty and one hundred thousand dollars. Mr. Enright mentions one and a half times monthly rental collections. That [8] would be somewhere around fifty thousand.

The Court: Are all of these indebtednesses amortized so that there are monthly payments upon trust deeds?

Mr. Enright: There is only one that I know of.

Mr. Camusi: There is only one, and the payment on that is about \$5,000 a month.

Mr. Enright: That is my recollection, about \$5,000 a month.

The Court: I take it, then, you are thinking of a bond in terms of about \$50,000.

Mr. Camusi: I would say \$75,000 personally.

The Court: 75,000.

Mr. Camusi: With some kind of a provision that if moneys on hand exceed that amount, it might be increased upon order of the court, or something.

The Court: Yes.

Mr. Cleaver: Mr. Hallberg is here.

The Court: Have him come in.

(Thereupon Mr. Hallberg enters chambers, and is introduced to counsel, by the court.)

The Court: Just have a chair, Mr. Hallberg.

The court has now given its decision in the mat-

ter, which I discussed with you last week, and I have asked counsel if there is any objection—of course, the defendant feels no doubt that he should have won the case, but since a receiver [9] is to be appointed—whether they have any objection to you as the selection of the court as receiver.

Now, they haven't announced any objection, but they don't know you. I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some years was in the management of real properties, sometimes in connection with court receiverships, and that your experience in it locally has been in the management of your own real properties, which were of income nature, and of similar properties owned by either you or your wife's relatives.

Mr. Hallberg: That is correct.

The Court: Now, if counsel wish to question Mr. Hallberg before the appointment is actually made, the clerk will swear him, and you may ask any questions you wish.

Mr. Enright: On behalf of the defendant, your Honor, I am in no position at this time to interrogate this gentleman. I am satisfied that your Honor would not have selected anyone except a man of not only integrity, but of ability. But my objection goes to the proposition of the appointment, your Honor, and I will seek, and now seek time to consider what steps are required under the procedural requirements of this court to bond against his appointment at this very day, or as soon as I assume the order can be drawn.

You see, your Honor, my basic position is that I do represent a member of the bar, and I do represent a person who, [10] I submit, under all the evidence has never taken one red cent from this trust, from the date of its execution and for years before in the operation of the joint venture.

Now, considering those circumstances, that is, a man who has a license, a professional license, and if he were to appropriate anything, why, his moral integrity would be involved, I do plead that this appointment be withheld for a few days, during which we can research the procedural aspects of an appointment; and, secondly, ascertain what expenses would be incurred if he were to bond against the appointment of a receiver, because it is my recollection under Rule 56—I believe it is 56—concerning appointment of receivers, that it is an appealable order, and I am sure the court appreciates that I, as trial attorney, cannot make these decisions without consultation with my senior, Mr. Nos-saman, and with my client, also an attorney.

So I would seriously plead for a little time here in considering the court's decision, and considering the appointment. But never do I question the appointment upon the ground of the integrity of this man or qualifications, because I have no doubt that the court thoroughly investigated that aspect before even selecting Mr. Holmberg—is that it?

The Court: Hallberg.

Mr. Enright: So that is about all I could say at this time, your Honor. [11]

Concerning his obtaining legal advice, I might

state that to me personally, and so far as I can state on behalf of my client, his selection of an attorney from the O'Melveny & Myers firm sounds very good to me, because it is one of the finest law firms in the community.

The Court: What I understand he has in mind is the selection of an attorney who is about to leave them,—

Mr. Hallberg: He has just left.

The Court: —for the purpose of forming his own legal practice. What is his name, Mr. Hallberg?

Mr. Hallberg: John Whyte. That is W-h-y-t-e.

The Court: Of course, an order appointing a receiver is an appealable order, but it cannot be appealed from until it is made.

Mr. Enright: Yes.

The Court: I think it is not appropriate for the defendant to remain longer in control as trustee, for several reasons which do not reflect upon whether or not he has been taking money from the trust. I don't understand that there is any charge that he has ever stolen anything. Of course, there is an action for an accounting based upon various grounds, which we need not enumerate here, which include, among other things, that he has allowed, I think, excess fees to himself. Is that not it?

Mr. Camusi: That is one of the grounds. [12]

The Court: Then, too, one of the matters which is treated in the memorandum that is today filed in the case in chief, is that the defendant is agent of a trust at a rather remunerative rate of com-

pensation, and since it has been determined that he was not entitled to enter into that, or, at least, that his entry into it was voidable at the option of the co-trustor, it would not appear just that he should continue to earn or receive the considerable emoluments which the contract provided for him during the extended period that elapses between judgment and appeal in cases of this character.

So I would like Mr. Hallberg to begin his duties as receiver upon his qualifying.

Now, if you can have an order for us, Mr. Camusi,—

Mr. Camusi: I will have it.

The Court: —we will either execute it, or make some revision in it.

Now, these gentlemen, Mr. Hallberg, have talked about bond. The bond that is commonly required of an executor or administrator under California law is one year's gross income from the property. The properties here would produce such a figure that one year's gross income would be quite considerable. It is rather contemplated that the beneficiaries under this trust will receive funds from time to time, and there are indebtednesses and regularly recurring expenses, which a receiver would have to administer, which will mean that he would [13] never have in his possession or under his control in the ordinary course of administration a whole year's income. So it has been suggested by the attorneys that a bond in the sum of \$75,000, in the usual and customary form as that given by receivers appointed in these courts be a proper bond

in this case, and the court will and does fix bond in that sum.

Do you have an order of appointment drawn, Mr. Camusi?

Mr. Camusi: It has been drawn, your Honor, and I hope to get it up here shortly this afternoon.

Mr. Enright: May it please the court,—

The Court: Yes.

Mr. Enright: —I haven't read the decision, the written decision filed this day, but may I make comment upon the statement just made by the court, that is, concerning the fees received by Mr. Richman, the defendant.

If that be the occasion for the appointment of a receiver, this day or within the next few days, then again I point out that the most he could do would be to pay himself, and I here offer to see that he does not pay himself the fees received under the contract, and that the moneys can be impounded until we have had opportunity to present the appealable aspects of the appointment of a receiver.

The Court: There are considerable comments in the record, and the court is going to appoint a receiver as soon as an [14] appropriate order is presented to the court.

Mr. Enright: I just want to make my position clear.

The Court: Yes. Now, if you gentlemen wish to consult with the receiver whom I have indicated will be appointed, we will provide one of the rooms adjacent to the chambers for such consultation, so that you may orient him to immediately pending

problems which you feel might enter into the employment he is about to assume.

I know you have another engagement, Mr. Enright, but you might take just along enough to get an exchange of names, addresses, telephone numbers, and the like.

I am going to suggest to Mr. Hallberg, who I think has a place of business somewhere around San Gabriel or San Marino, or South Pasadena,—

Mr. Hallberg: It is in Pasadena.

The Court: And you live at Corona del Mar?

Mr. Hallberg: That is correct.

The Court: —that it would probably be a convenience to the estate, and possibly an economy to it, if some of the untenanted apartment or apartments be made a headquarters for the receivership during its duration, so that you would have a headquarters for the purpose of this case in one of the properties which is to be managed. But you can talk that over with the attorneys.

Mr. Hallberg: Yes, sir. [15]

The Court: I believe that is all we can do at the moment.

You will have your order up during the day, Mr. Camusi?

Mr. Camusi: Yes, sir.

The Court: Then Mr. Hallberg can take over late this afternoon or tomorrow morning, and Mr. Enright can go forward with the appeal, if he is so advised.

Mr. Enright: Yes. I am engaged in trial in an-

other department, and I have to leave. We will co-operate in every respect with Mr. Hallberg.

The Court: Thank you. Mr. Cleaver, will you see that they have an agreeable place to work? They might want to use the witness room, or might find the jury room a more comfortable place, or they might prefer to use your room, although there are a lot of books in there.

Thank you, gentlemen. [16] * * * * *

Los Angeles, Tuesday, Dec. 1, 1953, 4:45 p.m.

The Court: All right, Mr. Wyatt.

Mr. Wyatt: We are in this position, if your Honor please, we would like, if possible, to obtain a stay one way or another. We should like to know if the court will set the amount of bond that the defendant would be required to file in order to obtain a supersedeas bond.

The situation is this: Under the Federal Rules of Civil Procedure the defendant may obtain a stay of execution, as a matter of right, by filing a supersedeas bond. He can do that at or after the time of appeal.

It is doubtful whether he can do it before then. And we are in this difficult predicament, that the defendant has not yet been served, that no judgment has been entered and he has received no order appointing a receiver.

The Court: Mr. Wyatt, I think perhaps the concern isn't quite as imminent as you have been led to believe. The receiver hasn't brought up the bond.

Mr. Wyatt: He has, however, attempted to obtain funds already. This is rather strange. I don't

know this, but I assumed that because he and his attorney had been around visiting apartment buildings and informing the manager she should turn money over to him, that he complied with all those requirements. [2]

I am rather surprised to find he hasn't yet filed a bond.

The Court: While there has been a receiver appointed a great many times it has been that in other districts that maybe they let them have a little different bonding procedure.

I fixed the bond. He went out to get it. I understood the bond would be presented to the court at 9:00 o'clock this morning. No one has been in.

Mr. Wyatt: I see. Well, the bond is only one of the expenses. Frankly, we are trying to avoid, in obtaining the stay pending the hearing of our motion, which was the reason I submitted the other application for a stay pending the proceedings, until such time as you could hear our battery of motions on the receivership, that that was the main reason, it is within the discretion of this court to stay any order that he grants pending, well, in the discretion of the court, upon such terms as he deems just.

It was my feeling at the time I submitted that order that if we could obtain a stay we would avoid, one, the expense of a bond premium, if we could make a further showing to the court successfully, and we feel we could, or we wouldn't be offering the motions, that if we could make a successful showing to the court why the proceedings should

be further stayed by granting the stay, until our motions could be heard, that the court would eliminate the expense of an accounting of these funds which the receiver has already been attempting [3] to obtain.

If he has not filed any bonds under a mistaken, under misapprehension, thinking he would obtain the funds without having filed the bond, there is another expense which may yet be avoided if we can obtain an order staying the order until such time as the motions are heard on Thursday.

If I may, I would like to renew my motion under those circumstances, since I find out he hasn't obtained a bond himself.

The Court: The bond will have to be approved by the court and he isn't entitled to take over any estate, under the rules, that are in this district, until he has posted a bond and taken the oath. [4]
* * * * *

Los Angeles, Friday, Jan. 15, 1954, 2:40 p.m.

The Court: I am sorry, gentlemen, for convening 40 minutes late. I had two reasons for that.

One of them was a civic duty which kept me about 15 minutes, and the other was a writ of habeas corpus which was waiting for attention in chambers when I got back, and it took me until the present time.

All of this I hoped might bring about an amicable resolution of your dispute. If it does not, we will proceed to hear your case.

This is a hearing on the petition of the Receiver for authority to renovate individual apartments

located in five apartment houses included among assets of the former Richman Trust.

The court knows of the written approval which has been filed by the litigant Lyda Tidwell and the objection which has been filed by Mr. Richman and, of course, the petition which Mr. Hallberg filed.

What we might do, unless you have arrived at some disposition, would be to have Mr. Hallberg take the stand and let anyone question him who wishes, bearing in mind, I hope, that the judge reads whatever is filed here. I am not ignorant of what the issue is. But ask him any questions that you think should be brought out to give us a proper record [2] upon which to act, and then I will hear your arguments or comments.

If anyone thinks of a better way to proceed, let me know.

Mr. Enright: Your Honor, it may be a better way to proceed in this way: That I do not construe Mr. Richmond's answer to the petition as an objection at all. We construe his answer to be an attempt on his part, and in his behalf, to inform the Receiver as best we can concerning this property which Mr. Richman had for some period of time operated.

The defendant feels and believes that the Receiver should have full authority to spend all moneys available to carry out a program of rehabilitating the property. If he, the Receiver, is of the opinion that it is advisable he should receive and use depreciation funds, capital receipts, some notes in there, I think, some of the intangibles that are

coming in, those should be received, and any other moneys in his possession, to properly take care of those properties.

Our answer is one drafted with the intent and for the purpose of giving to the Receiver our best knowledge based upon Mr. Richman's, I can say, just a little more than 20 years' experience in operating multiple income property in this immediate vicinity.

So I do not consider we have an objection.

The Court: Maybe "objection" was an unfortunate word. [3] I didn't construe what you would file as being a consent, that the Receiver go ahead and do the particular things in toto which the Receiver thinks, according to its petition, he should do.

So let's get, if we can get clarified, what he should do now.

Do you think it might me worth-while to have him come up here and have him state what he thinks should be done, in order to properly bring the properties into the best condition and most provident yield which can be expected in his administration?

Mr. Enright: I have no questions to ask, I assure you, of the Receiver on such a question.

Secondly, so far as Mr. Richman's answer is concerned, it is deemed without prejudice, that is, your Honor, filed in the manner which it is, without prejudice—I will say without prejudice because of our firm position that we believe we should maintain in this whole litigation.

The Court: I understand that.

Mr. Enright: You do, your Honor?

The Court: Yes. You take the position there should have been a judgment for the defendant, and that the appointment of a receiver and judgment for the plaintiff is not the result which the evidence and arguments spelled out.

Mr. Enright: Yes, your Honor. [4]

The Court: Well, that is the position usually the party who loses a lawsuit takes.

I understand, by being cooperative with the Receiver, nothing has been waived, and I appreciate the fact Mr. Hallberg, on occasions when he has seen me, has told me of very nice cooperation that Mr. Richman has given him in regard to matters where they have had occasion to work together, saying that even on some occasions Mr. Richman had gone beyond the mere request which the Receiver had made for information and had given positive cooperation on a voluntary, very useful basis.

So what I want to know now is to have a foundation when we leave the court today for an order which will tell Mr. Hallberg definitely what he should do in the matter, where he has asked us for instructions.

He has come here somewhat in the spirit and procedure of an executor of an estate who asks for directions. And as we all know, that is a common practice in probate, for executors to ask the court for directions.

I want to give him such as will not do violence

to the purpose we wish to accomplish ultimately by the judgment, and without bringing any basis for litigation over the things that have proceeded in this matter.

Mr. Enright: I can only say, your Honor, the best I could do would be to merely ask that the Receiver read the [5] answer I drafted and to further suggest that if the Receiver desires Mr. Richman's views upon a particular problem pertaining to a program on any one of the houses or all of the houses that I would appreciate his consulting direct with Mr. Richman.

I am not sufficiently informed in finances or individual apartment house operations to cross-examine or examine Mr. Hallberg.

Secondly, I wouldn't feel in a position to conduct such an examination, because to me it is a day-to-day and current problem that anyone managing and operating properties in excess of a value of a million dollars has. He must have authority, we feel. He must have discretion in exercising that authority.

That is all I have to say on that score.

The Court: Mr. Whyte, do you have anything that you think ought to be further brought to the court's attention?

Mr. Whyte: There are one or two facts which are not incorporated in the petition which is on file with the court. I thought that for the purpose of making the record as complete as possible, in support of the petition for authority to renovate, I might ask Mr. Hallberg to take the stand and we

would adduce one or two additional facts in support of the petition. [6]

ROY E. HALLBERG

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name?

The Witness: Roy E. Hallberg.

Direct Examination

Q. (By Mr. Whyte): Mr. Hallberg, calling your attention to the fact that your petition for authority to renovate was filed on December 18, 1953, and that this is January 15, 1954, are you familiar with any change in the situation which has taken place at the Fountain Manor Apartment House since the date of filing your petition for authority to renovate?

A. We have had four vacancies develop practically overnight. These vacancies apparently were caused by the apartments not being in tenable condition. By that I mean they were getting quite dirty. The entire effect there was one that the tenants found would not be conducive to continue living there.

They did go out and claimed they found better apartments in the area, in better condition, at moneys they were willing to pay.

Q. Did some of the tenants, in fact, leave because of the condition of the apartments which

(Testimony of Roy E. Hallberg.)

they complained of? [7] A. They did, yes.

Q. That, you say, has been quite recently?

A. Practically overnight, the last two nights.

Q. Have you had any trouble with the heaters at the various apartment houses?

A. I understand they are giving considerable trouble in certain apartments. And it is quite apparent something will have to be done there.

Q. Did you have in mind using some of the money for renovation to take care of that heater problem? A. Yes.

Q. What problems have you had at the Western Arms Apartment House recently, in regard to vacating of apartments?

A. Well, we took over the building on January—December 1st. There were seven vacancies. And in going into those apartments, they were extremely dirty and actually they were more or less carrying out the decorating scheme of about 1928.

In other words, they weren't modern. They were a tan color than was more or less prevalent at that time, and the lamps were old, quite. I would say they were obsolete.

Q. May I interrupt just for a moment?

A. Yes.

Q. Is the decor, that is, the decorating scheme and the colors at each one of the five apartment buildings rather [8] old-fashioned?

A. They are. It is the color that seemed to be quite prevalent back about 1928 and '30, '31, and

(Testimony of Roy E. Hallberg.)

in around in there. It is carried through. Tan color seems to be predominant.

Q. Will you continue what you were telling us about the Western Arms?

A. That is not the present-day attitude toward decorations in living rooms and homes; they want more color.

Q. When I interrupted you, will you just continue with what you were telling us about the Western Arms?

A. The lamps are quite old. They are not being used any more. And they do create an atmosphere in a home that isn't at all pleasant, especially when you see the way modern apartments are being furnished.

Q. Did you have any experience at the Western Arms, where you renovated one of the apartments and found that, as a result of that renovation, you were able to increase the rent?

A. Yes, we did have one that we tried out, just to see what would happen. We were able to rent that for a little bit more money.

Q. What particular item of renovation did you do?

A. That was painting—different colors entirely—and taking the furniture, which is mostly overstuffed, and [9] moving it out, and bringing into that apartment furniture that had color that would harmonize with the rest of them.

(Testimony of Roy E. Hallberg.)

Q. Did you then demand of the tenant an additional rent be paid?

A. Yes, we asked for a higher rent with a new tenant, and they paid it.

The Court: What was the differential?

The Witness: It was only \$5.00 a month, but it just shows what could be done.

Q. (By Mr. Whyte): Calling your attention to the Fountain Manor, is it true that one of the apartments there had been vacant for about two months at the time you took office as Receiver?

A. That is correct. That is a two-bedroom apartment and it had been shown any number of times to various prospective tenants. None of them would take it because, in the first place, the stove in that particular apartment was really pretty well worn out, and it would have cost about \$50.00 to repair that stove.

Q. What did you do with respect to the stove, if anything?

A. We went out and succeeded in buying a stove for, I think it was about \$99.98, and we put that in.

The next morning the first party took it and said, "Oh, boy, what a brand-new stove, what a nice stove," and we [10] rented it.

Q. For how much are you renting that apartment? A. \$135.00 a month.

Q. That was the same apartment that had been vacant for two months?

A. That is right.

(Testimony of Roy E. Hallberg.)

Q. What is the condition as to the tile in the bathrooms and the sinks at the Western Arms Apartments?

A. Well, they are—the tile is not in good condition there. The sinks have tile all around on sort of a work shelf, a work space there, and also around the edges of the sink. It has also about, I would say, ten inches of tile back splash against the wall. I would say 60 per cent of the apartments in that building have tile in front of that sink that has big pieces of tile broken out. It looks as though somebody took a Ginger Ale bottle and was trying to get the cap off and just hit the top of it there, and it took some of the tile with it.

It isn't a very pleasant-looking sink the way it is now. And there again the color of the tile is not in harmony with the rest of the kitchen.

Q. Have the tenants been complaining about that condition?

A. Yes, some of the tenants have complained about that. Of course, going into a kitchen that has those gouges of tile [11] out right in front where you see it, it doesn't add to the appearance of that particular kitchen.

Q. Is it your particular purpose, if the court grants you authority to renovate these apartments, to renovate only individual apartments as it becomes necessary, in your opinion, to take care of certain ones?

A. Actually, the purpose of this petition was to

(Testimony of Roy E. Hallberg.)

be allowed to go in and take these apartments as they became available and upgrade them.

I feel that by getting a better class of tenant attracted to the apartment we will be better off in the long run. The few dollars expended now, with the market that is getting a little bit more competitive, we are going to stand a little better—

Mr. Enright: Louder, please.

The Court: He said that with the market which is becoming a little more competitive—

The Witness: The market is becoming a little more competitive, and this experience we had last night and the night before, where four tenants moved out of one building, I think, points to the fact we are getting into a little more competitive market.

There are going to be a few more apartments available, and not having a completely acceptable apartment to prospective tenants, our vacancy factor will gradually go up. I [12] think you will agree with me on that.

The Court: On the whole, has your vacancy factor gone up during your receivership?

The Witness: Up to this point our vacancy factor has gone down just a wee bit.

The Court: You have done some renovating before this petition?

The Witness: Yes, before this petition.

The Court: I might say, counsel, Mr. Hallberg called me on a couple of occasions and said, "Would it be all right if I bought a stove or—" I don't know

(Testimony of Roy E. Hallberg.)

whether it was a stove, but I am just using that as a kind of an example; apartment equipment. But some particular small item.

And about the second or third call I told him, "I think it would be better if you filed a petition and we get some authority, and let the people who are the owners of this property know what you have in mind, rather than to have informal conversations with the judge in chambers about it."

So the petition was forthcoming. But I had understood he had put a stove in and that he was seeking to meet the market, which I think Mr. Richman would have to no doubt do if he were continuing in management.

We have had large insurance company operations in the apartment house field which have come here within, well, the past several years, but they are becoming increasingly reflected [13] in the situation where the over-population is not what it was, that is, the building and the like has been catching up with it.

The Witness: Over at the Oliver Cromwell, right around in that neighborhood, you have quite a few brand-new buildings, and those are direct competition to the Oliver Cromwell.

I just mention that because I was over there the other day and checked on the other streets. But you are going to have the same situation all over this area.

The Court: Does this involve, this particular program which is the subject of your present peti-

(Testimony of Roy E. Hallberg.)

tion, any financing beyond payment of bills out of current income?

The Witness: No, sir. I believe that this can be worked out from the moneys that are received from rent, without going outside for any additional financing.

The Court: Do any other counsel wish to ask Mr. Hallberg any questions?

Mr. Martin: We have no questions, your Honor. We filed our consent.

Cross Examination

Q. (By Mr. Enright): Mr. Hallberg, did you have an opportunity to examine the answer of Mr. Richman to your petition?

A. I just saw it this morning.

Q. I see. You do not have a copy of it? [14]

A. No, sir, not yet.

Q. I will furnish you with one.

The Court: It is quite full and quite detailed, and sets forth a lot of experience that Mr. Richman tells us he has had with these particular properties. I think the Receiver should know about it and have the benefit of the information that is in it.

Thank you for giving him a copy.

Mr. Enright: That was the object of my starting to ask questions of Mr. Hallberg, was to make certain that the details set forth in the answer were brought to his attention.

Mr. Whyte: May I inquire, Mr. Enright, whether you intend to quiz Mr. Hallberg concerning the

(Testimony of Roy E. Hallberg.)

allegations of the answer which you had filed? He has not had an opportunity to read that, as you know, so I hardly think it would be right for you to interrogate him concerning the subject matter of that answer.

Mr. Enright: Oh, no, I wouldn't do that. I have accomplished the object I had in asking Mr. Hallberg the questions so far, that is, bringing to his attention this answer.

I think that is all, your Honor.

One of our problems is that we have no knowledge of Mr. Hallberg's experience in the particular field, other than what your Honor told us the day he was appointed. We would appreciate Mr. Hallberg going over his problems, if he [15] will, to some degree with Mr. Richman from time to time, if that meets with the approval of the parties, because that is the only means we can have.

May I say, second-guessing Mr. Hallberg's judgment in shifting sinks in the Western Arms Apartments, which our answer shows is rapidly becoming a changed district, so far as colored people are concerned—

The Witness: They are not there yet, but they are gradually encroaching from the south.

The Court: They are certainly entitled to it, and they do pay rent.

The Witness: Yes, and sometimes good rent.

Mr. Enright: Yes, they pay rent. The question is whether or not a substantial amount of money should be expended on that property, bearing in

(Testimony of Roy E. Hallberg.)

mind that someone will have to decide whether or not they want the attorney to operate it in its present status or revert it to a house renting to colored people.

The Witness: Actually, there are no colored people there. They are further south.

Q. (By Mr. Enright): They are just over on Country Club Drive. That is a block away, isn't that right? A. Yes.

Q. And just a block down further.

A. Right around the corner there in that vicinity [16] there are a lot of homes on the next street back.

Q. Oh, yes. I live there, I know it very well, and I am quite certain—

Mr. Martin: It should be a safe territory then, if you live there, Mr. Enright.

Mr. Enright: Was there some question of safety?

Mr. Martin: No. I say we are not going to worry about it as long as you live near there; we will feel we are in good hands.

The Court: The petition is drawn in terms of asking for authority to do whatever improvement and renovation is necessary, to the extent of and not exceeding \$500.00 for each unit in the apartment.

It is drawn in a way that leads the court, on reading it, to believe that he doesn't propose to go out and spend \$500.00 on each apartment, but that there might be no expenditures in some and a few

(Testimony of Roy E. Hallberg.)

dollars in others; but, in any event, a maximum of \$500.00.

He tells us now he does not propose to incur any long-term indebtedness or to do anything which would incur a hypothecation of the title to the properties, that he can do what he has in mind out of current expenses, so the petition will be granted.

Mr. Whyte, I think you brought in an order, didn't you?

Mr. Whyte: I have not, your Honor. I think you indicated [17] you might endorse on the petition that it is so ordered.

Mr. Camusi: We have no objection to it.

The Court: If the clerk will hand up the petition, I will put that endorsement on it.

There is another matter in this case with which I am concerned. When were the objections, if any, to the findings of fact and conclusions of law and proposed judgment, or the alternate documents of that character—

Mr. Camusi: I understood the 16th.

Mr. Enright: That is right, the 16th that will be on file. I am afraid by mail, your Honor, because I didn't finish dictating until just before I came up here.

The Court: I understand that in lieu of having a formal order drawn, which, of course, is something by which Mr. Whyte would earn a fee—I don't mean to be chiseling on you, Mr. Whyte,—but counsel are agreeable that I simply write on

(Testimony of Roy E. Hallberg.)

the bottom of the petition the words, "This petition is granted."

Mr. Martin: So stipulated.

Mr. Camusi: So stipulated.

The Court: It is now so endorsed. You have your order, Mr. Hallberg.

The Witness: Thank you.

(Witness excused.)

The Court: We will look for either your amendments, [18] objections or acquiescence in form, as to what has heretofore been filed, when I come back to court after the week end. If there is any dispute we will have a chambers conference on it, or a court hearing, whatever the nature of what is filed indicates will be appropriate.

I don't mean for you not to say what you want. I will look it over. If it appears to justify a court hearing, we will set it for hearing as near to immediately as can be arranged, with the proper notice and recognition of the commitments of counsel and the court, with what accords with other counsel.

If it turns out that you are as agreeable in that matter as you were in the one today, we will simply enter the one which has been agreed upon as to form, understanding in no sense is it agreed upon to being a decision on the merits of the case, but only as to the form of judgment, form of findings and conclusions. And then you can get on with either amicable disposition of this controversy or we will proceed to an accounting, or we can sit by and wait for an appeal, whatever develops.

(Whereupon, at 3:15 o'clock p.m., Friday, January 15, 1954, an adjournment was taken.)

* * * * * [19]

Los Angeles, Monday, April 12, 1954, 11:00 a.m.

The Clerk: 13,742, Lyda Tidwell vs. Frederick I. Richman, et al., hearing on first and final report of Receiver; petition for allowance of fee to Receiver; petition for allowance of fees to attorney for Receiver.

The Court: Counsel, we have in mind there are two basic quarrels here. One as to how the money in the hands of the Receiver shall be divided, that is, what special credit shall be allowed to one party or charged against the other. I don't think we can take care of that in the time that remains today, if we are going to take care of the other.

The other is a matter of allowance of fees for the Receiver and for his attorney.

It seems to me we can excise that from the first and try it separately.

There is currently or there was as of the end of last week, at least, a misapprehension, I think, as to how the Receiver came to be appointed.

The Receiver didn't come to the court and make any representation. The Receiver didn't ask for the appointment.

I have a list of many people who have come in here from time to time asking to be considered as receivers, conservators, and the like.

This Receiver was appointed out of the court's knowledge [2] of him, the court's confidence in him.

It is true that when he came in I asked him to state some things for counsel, so they would know whether they cared to have him embark as Receiver, having in mind that we would appoint someone else if this one were unsatisfactory to you, and I think I told you so.

I have known this man, it is true, rather casually, but I have known of his reputation in the community and I have known of properties in this community which he has managed, which are reputedly successful.

So I am not going to hear any evidence on whether he should have been appointed. The time for that has passed. He has now discharged his duties and the question is shall he be paid, and if so, how much.

Now, we will proceed to hear that issue, and if there is a quarrel with his figures and you think you need an accounting, you think you need an audit by an accountant, we will allow a moderate but ample time for the procurement of such audit.

However, if either litigant wants to have the figures audited, the court is going to have them audited and I will take the fact that you are willing to hire an auditor and have them audited as a flag there is no confidence in the Receiver, a more substantial flag than simply saying he is a man of no fidelity, the way it has been said in briefs, [3] which are not pleadings.

If you want to go ahead and have an audit, you can have an audit, but I am going to have one for the court. We will appoint a certified public ac-

countant—I don't know yet who—satisfactory to the court, and one who doesn't know the Receiver. We will make him take an oath to that, and have an audit.

If it turns out the Receiver is either a miserable bookkeeper, and these records are in bad shape, or he is a man of no fidelity and has served in that capacity here, or with that taint, then the expense of the audit will be assessed against the Receiver. If it turns out there is no substance to it, it will be assessed to the person who made the challenge.

Mr. Enright: I take it the court desires a reply.

The Court: No. The court desires evidence.

Mr. Enright: If your Honor please, I would like to point out that we sincerely meant every word we stated in our objection. We intend to produce evidence in support of it.

We understand the law to be that upon a petition filed by a receiver, that upon an objection being filed, that they constitute the pleadings, that is, a complaint and an answer. And upon the issue being joined, then the matter is set down for trial.

We desire to avail ourselves of that due process, that [4] is, a trial involving these moneys.

The Court: You don't want to try it today?

Mr. Enright: No, your Honor.

The Court: All right. It is going to be divided as you have suggested, that is, we are going to try first the issue of what, if anything, the Receiver is entitled to, and get him paid, if he is entitled to anything, and what his attorney is entitled to, if anything, and get him paid.

The balance of it can be deposited by the Receiver into the registry of the court. The registrar can hold it while Mrs. Tidwell and Mr. Richman continue their timeless litigation.

Mr. Enright: That is acceptable. Now, as to the timeless litigation matter, I take it that that can be litigated between them and they can join their issue and get their litigation started. Or is that to be ruled on today, too?

The Court: No. From what you say you don't want anything heard or ruled on today.

Mr. Enright: No. I agree to this court hearing the attorney's fee and the Receiver's fee, and that be set down for trial at any time convenient to the parties and to the court.

But I do desire to take the Receiver's deposition and the attorney's deposition before then, and to make a further investigation of the record. [5]

Mr. Whyte: May I ask a question of counsel, your Honor?

The Court: Yes.

Mr. Whyte: Before we embark upon a long bitterly contested hearing as to the Receiver's fees and his attorney's fees, I would like to ask counsel the meaning of the last paragraph of his objections filed by him on behalf of Mr. Richman.

He says at page 12 of those objections, line 11:

"That the trial of the issues created by these pleadings be not had until your answering defendant has had an opportunity to avail himself of the discovery processes of this court to prepare for a hearing upon the Receiver's petition for more than

\$4,500.00 fees and the attorneys' petition for more than \$3,000.00 fees and for such other and further relief as may be just and proper in the premises."

Do I understand from that language that the defendant, Mr. Richman, desires a hearing in the event that the Receiver wishes the court to assess more than \$4,500.00 for his fees and the attorney more than \$3,000.00 for his fees?

Mr. Enright: I don't know what the Receiver is asking as yet. I asked you specifically, Mr. Whyte, if you wouldn't inform me so we could make a judgment on our own part, but I didn't get that reply.

If the Receiver is asking for \$4,500.00 or \$5,000.00, [6] which I assume he is—from our telephone conversation I assume that to be his position—plus extraordinary fees, then I assure you, sir, we will desire a trial on the merits.

Mr. Whyte: Do I understand then if the Receiver is willing to take \$4,500.00 and if his attorneys are willing to take \$3,000.00 you do not desire a trial on the merits?

Mr. Enright: No. There has been further point raised since then. As I understand the issue, there is a collateral issue now and I don't know what the position of the court is on it.

I did receive a brief this morning and I can answer it, if necessary, that the plaintiff Lyda Tidwell complains that this court should now adjudicate their respective rights under a contract that they made on February 25, 1953, when she accepted the offer of Frederick Richman to sell to her.

That, I understand, according to their pleadings here, is to be determined by this court and that is a separate and distinct new cause of action, new issue.

And the most unusual part of it is that they are now asking us to pay revenue stamps, pay insurance policy on the property as conveyed, when the very escrow they signed carrying out that agreement specifically agrees that Lyda Tidwell pay those.

But going back, Mr. Whyte, to your answer, I would say in this status of the record that we desire to have a hearing [7] and an opportunity to present evidence, if the Receiver expects \$4,500.00 or any sum substantially near that amount.

The Court: There is such a sharp conflict presented by the pleadings that, on one basis, the Receiver might get more than a thousand, and on others he might get ten. I can't tell from the pleadings. The court has to have the evidence, unless the parties are able to acknowledge certain things to be true.

The Receiver says that Mr. Richman let the place run down to where rain came in and ruined otherwise suitable painting and cost the estate several hundred dollars to correct the fault which reasonably prudent management, even minimum management, I should say, would have prevented.

Mr. Richman, on the other hand, says that the Receiver has been tossing away money and failed to comply with lawful orders and haggled until he got himself cited into the Municipal Court, with Mr. Richman along with him.

So I don't know how a court can decide that by reading the charge of one against the other, or the answers.

The only thing a court can do is hear the evidence. That we want to hear. But it is a salient principle with regard to receiverships that receivers, whatever they earn, if they do earn, should have it fairly near to the close of their performance of their duties.

So I want to hear it as soon as due process—I mean in [8] the spirit, not just the letter—will allow people to get ready for it. When will that be? Bearing in mind we are going to try these separately.

Tidwell against Richman, so far as the arguments that come up in that matter, as distinguished from the receivership matter, has been so protracted a matter and the main issues have been disposed of—they involved hundreds of thousands of dollars—that this quarrel as to who gets what, on the relatively small amount in the Receiver's hands, I think will just have to wait to where we can fit it into our calendar as we do ordinary litigation.

So I would like to try the Receiver fees and his attorneys' fees as soon as you feel that prudence and diligence can bring it in court.

Mr. Enright: At the convenience of counsel and the court, I will be ready for trial within 20 days from now.

I do want to comment, your Honor, though, concerning the statement I believe your Honor has twice made now. This second issue, we do not concede that issue is before this court. You appreci-

ate that, your Honor. A contract was made settling this lawsuit in February 1953. There is no pleading before the court involving that contract, as I see it.

The Court: But the money itself is before the court.

Mr. Enright: I appreciate that, but they adjudicated their rights in an original proceeding. We have authority to [9] support our position on that score. We can cross that bridge when we come to it.

We do have to try the Receiver's fees and the attorneys' fees before your Honor. I do not want it considered by anyone I am conceding the other matter.

I will be ready for trial within 20 days, providing the Receiver and his attorney can appear.

The Court: They want to be paid, I suppose, in the reasonably near future. The Receiver should or would make himself available for a deposition promptly.

Mr. Enright: If they can appear within the next ten days for their depositions, say, 15 days or 10 days after the taking of their depositions will be agreeable with me.

The Court: How long do you think it will take to try this question of Receivers' fees?

Mr. Enright: I will say not less than two days, your Honor.

The Court: Well, we like to think in terms of not more than, so that I know how to budget it, where we can providently look for a place to fit it into the calendar.

Mr. Enright: I would say the objecting party's evidence would reasonably take two days to present.

The Court: How about you, Mr. Camusi?

Mr. Camusi: I won't need any time on this. I think the only questions involved are questions of law. I don't have any [10] argument with the accounting, except as it affects, really, a division after the payment to the Receiver and his attorney.

The Court: Do I understand then the argument, insofar as you getting it in, is how the money shall be divided, which is left after the Receiver gets through.

Mr. Enright: Yes. And, of course, I may want to comment on what I think reasonable fees are. But as far being involved, we are not making any charge that the Receiver hasn't done the job given him.

The Court: I will set it for Tuesday, May 11th. That gives us 29 days from today. Tuesday, May 11th, at 9:30. If we set it at that time maybe we can get through that same week.

Now, are you going to have an audit?

Mr. Enright: I am not going to have an audit made. I am going to further examine the records that I understand are being kept intact by the plaintiff at the Oliver Cromwell. So far as an audit is concerned, we are not causing an audit to be prepared.

Mr. Camusi: We have kept them intact. However, I moved them before getting your letter. They are out at the offices of the realtor, of the property

manager. They will be available any time you want to see them.

The Court: All right. Any party to the action that wants an audit made can have it made. The court will not have [11] an audit made for the court, unless there be some audit made by one of the parties litigant or a party litigant asks the court to appoint an auditor.

There is no answer to that question now. You can write me a letter if you change your mind.

Mr. Enright: I suppose Mr. Whyte and I could agree among ourselves for deposition, without making it a part of the record.

Mr. Whyte: I believe so, counsel.

The Court: Is there anything else then we can do on this day?

The other matter, so far as I see it, is just a question of how the funds are to be divided. I had the impression here that it was settled by the stipulation under which we proceeded, which led to settlement of the case, and with the letters and agreements which were entered into contemporaneously with the stipulation, satisfaction of judgment and the dismissal.

If it is to be disposed of on some other basis, we can or we will have to have that brought in by appropriate pleading.

Is there anything else we can do?

Mr. Camusi: I won't comment to the court's last comment, but I hope we can argue that question later.

The Court: Oh, yes. Of course, you will have a trial date set—

Mr. Camusi: Pretrial— [12]

The Court: Perhaps we ought to have a pretrial on it.

Mr. Camusi: I think there is a little accounting involved and maybe it will result in stipulation of those issues, and leave the trial more or less a matter of law.

The Court: Let's set a pretrial on it then. We are going to try the Receiver's fee issue on Tuesday, May 11th.

Let's pretry the other issue on Friday, May 14th.

Mr. Enright: Your Honor, I again point out that this court does not have jurisdiction of a contract made by Lyda Tidwell and Frederick Richman on February 25, 1953.

Mr. Camusi: Let's argue that at the pretrial.

The Court: That would appear *prima facie* to be so.

Mr. Camusi says, "Let's argue it." I am going to hold my mind open until we hear the argument.

If you are going to try and inject a contract of that sort in here, why, let me have a memorandum in advance of the pretrial on May 14th. You might let me have one, anyway, advising the court of what you feel the issues are respecting the division of the money after the lawful charges upon it have been exhausted by payment of the fees. And you can do likewise, Mr. Enright.

We might find, when we come here on the 14th, that everyone is agreed as to what the issues are.

If not, we will just have to have some framing of the issues by the pretrial process. [13]

Mr. Enright: That is on May 14th?

The Court: May 14th.

Mr. Enright: Yes, that is agreeable.

The Court: At 10:00 o'clock.

Mr. Enright: These memoranda now are to be concurrent?

The Court: They are not to be legal arguments. You shall point out what the issues are with respect to disposition of this money and simply state a point or points of law that are involved, with a citation to authorities.

But I do not think either the situation or the money involved requires that it be briefed, particularly in advance of framing the issues.

Mr. Enright: The time, now,—

The Court: 10:00 o'clock.

Mr. Enright: On the 14th we will submit our memorandum then.

The Court: The memorandum five days before then.

Mr. Enright: Five days before?

The Court: Yes. We will try the Receiver's fees the preceding Tuesday. That is, the Tuesday preceding the day we are going to have the pretrial.

(Whereupon, at 11:35 o'clock a.m., Monday, April 12, 1954, an adjournment was taken.)
* * * * * [14]

Wednesday, May 12, 1954, 11:15 a.m.

Mr. Whyte: I assume that your Honor will give me latitude on redirect examination, to develop

whatever additional facts that may not have been shown either by the report of the Receiver or by his deposition.

The Court: You both will have all the latitude you need to develop pertinent evidence. However, we are going to stick to the issues triable in this proceeding. And this is not a proceeding to determine qualifications preliminary to [4] appointment.

As to the Receiver's past employment, of course, that is relevant upon the question of what capacity of employment he has had in the past, because if you appoint a hundred-dollar-a-month clerk as a receiver, he gets a different compensation and brings a different quality of understanding to his work than if you appoint a hundred-thousand-dollar-a-year bank president. It is important for that purpose then not to determine whether the man should be appointed.

I have said before, but I think I will say again for the record of this proceeding today, that this Receiver did not ask for the appointment. The court sought him out on the court's own motion, the way judges of this division generally do. We disfavor having a list of people who want to be appointed receiver and prefer to generally make selections on our own knowledge or inquiry. * * * * *

Mr. Whyte: Is there no way we can get the deposition in evidence without reading it in its entirety, so as to make it a part of this record?

The Court: It may be offered as an exhibit.

Mr. Whyte: That is what I am suggesting.

The Court: All right.

Mr. Whyte: That it be offered as an exhibit, and I assume that that would require a settlement of the disputed objections and questions which were asked.

The Court: Some lawyers think it does and others think that it is sufficient to trust a judge to only consider the matters which are relevant and material.

Mr. Whyte: I am quite willing to do that, your Honor; quite willing. * * * * *

Mr. Enright: My silence to be construed as acquiescence in anything that has been said.

First, the petition itself is the complaint, and as of this moment I do not know what the Receiver seeks as to amount of compensation, in that he has failed to comply with Rule 18 (c) (4), which provides, "The notice shall show in what amount and covering what period fees will be asked for." [7]

Secondly, I view the objections filed in behalf of the defendant as an answer to the petition, which petition and answer join issue. And I feel that the issue involving—I assume the Receiver desires in excess of \$4,000.00. It is indicated that he wants \$5,000.00. That that issue, involving that amount of money, should be tried in due course, that is, upon the pleadings and the issues thereby created.

* * * * * [8]

Mr. Whyte: I am going to again renew my request that the deposition be introduced in evidence as an exhibit to the Receiver's report and petition. Otherwise, I shall have to consume the time of this

court in having the Receiver again testify to matters which were covered in the deposition, which are not covered in his report.

For the purpose of shortening the proceedings, I am suggesting that the deposition be annexed and introduced in evidence as an exhibit to the Receiver's report and petition.

The Court: Of course, depositions generally are not available as a substitute for live testimony in the courtroom, if the witness is available.

There is an exception to that under what looks to me to be an anomalous thing in our civil rules, that a deposition of a party may be received into evidence, introduced by either party, and it will be received.

I think the rule provides that, Mr. Enright. And while it is not in keeping with legal tradition the way we were taught it in law school, of legal practice, the way it is engaged in in the Superior Court, I don't see any escape from receiving this deposition if it is offered. Do you? Any legal escape.

Mr. Enright: Well, there will be a motion to strike some [9] of the answers that were nonresponsive to questions propounded. I will have to pursue the deposition with the usual manner in which one does when questions are propounded in court, and see what remains in that deposition if it is received in evidence. I should be accorded that privilege.

The Court: Yes. I would much rather follow Mr. Enright's suggestion, that the deposition be treated as something which was done by way of discovery and for exploration, and if oral evidence be

given which is in conflict with what was given in the deposition, the deposition may be used either for memory refreshment or impeachment.

But let's have the direct evidence of Mr. Hallberg as it might be needed to supplement the report. It is agreeable to me to receive it as a portion of his direct testimony.

You don't have to do that, Mr. Whyte, if you don't want to. That is what we think should be done.

Mr. Whyte: Pursuant to Rule 26, Federal Rules of Civil Procedure, I am going to offer the entire deposition of Mr. Hallberg in evidence.

The Court: It will be received as Receiver's first in order.

Mr. Whyte: Thank you, your Honor. I am now willing to—

Mr. Enright: Do you have another subject matter now, Mr. Whyte?

Mr. Whyte: I was going to say that I am now willing to [10] submit the case in chief of Mr. Hallberg, the Receiver, upon the basis of his report and petition for fees, as filed with the court, together with his deposition which I have now offered in evidence in its entirety, and rest my case in chief upon those two documents.

The Court: That is the report and the deposition?

Mr. Whyte: Yes.

The Court: Is there any objection to the report being received in evidence?

Mr. Enright: Oh, yes, your Honor. It is only a

pleading. It is not even verified. I don't see how I could quite accept that as a method of proof of facts.

The Court: You had better lay a foundation for the facts set forth for the report, as a report.

Mr. Whyte: I understood the court to suggest it initially, that the best method of doing this would be to submit the case in chief, the direct testimony, on the basis of the report.

The Court: I did. I still think so, but your opposition doesn't. He says it is only a pleading. And I think technically he is correct. It is only a pleading unless the exhibits to it are received into evidence upon a proper foundation. Then that will become an exhibit. Or unless the report itself be stipulated to be the direct examination, the direct testimony of the Receiver, which has often been done [11] in these courts by stipulation. That then opens up a wide vista of cross examination.

Mr. Whyte: Then I will ask Mr. Enright whether or not he will stipulate that the Receiver's report and petition for fees, together with the Receiver's deposition, may constitute the direct testimony of the Receiver in this case, subject to his cross examination on all of the matters set forth in those documents.

Mr. Enright: Are you through?

Mr. Whyte: Yes.

Mr. Enright: Now, concerning the two subject matters you propose, to wit, the deposition, first, I wish to ask at this time that I be accorded the privilege of examining that deposition before it is re-

ceived in evidence. So far as I know, I have never seen the original deposition yet.

Secondly, reserve for a motion to strike those portions of the deposition which were not even responsive to questions, if there are any. That takes care of the deposition part.

I understand it has been received in evidence?

The Court: We will order that it be stricken from evidence for the purpose of your having an opportunity to examine it and to object. I only admitted it in evidence because of the Federal Rule which Mr. Whyte read. I don't think it is very helpful, to just take depositions as evidence.

Mr. Enright: Now, concerning the petition itself, it is [12] not verified. There are many statements in the petition that—

Mr. Whyte: I beg your pardon. The petition is verified.

Mr. Enright: Pardon me, Mr. Whyte, if I am in error.

The Court: I was in the same error. I read it last night, but I read simply the court's working copy and that working copy did not show a verification.

Mr. Enright: I would say that it would appear as though it was verified, that is, the copy I have. But I fell into the same error, your Honor.

In any event, the statements made in the petition, being pages 1 to 14, as distinguished from the exhibits, are not testimony or ultimate facts. They are conclusions in most instances.

The Court: I recognize a great many are and I

recognize a great many that are outside the usual scope of a receiver's report, such as recommendations for future handling of the property. Those are things a receiver might make by way of suggestion to his successor.

I can't accept them here as probative on any act of the Receiver with respect to the conduct of his trust, and I would not consider them that way.

If you want to excise those portions of it, that might be done. If you want to trust me to do it, I will look at it with a very critical eye.

Mr. Enright: I would have to take the position if it is [13] received in evidence it is received over my objection.

The Court: All right. There is another matter—

Mr. Whyte: Do I understand then, in response to my request for a stipulation, that the case in chief, the direct testimony of the Receiver be submitted upon his petition and report, and his deposition, that you are refusing to so stipulate?

Mr. Enright: I do so refuse.

Mr. Whyte: Thank you.

Mr. Enright: I have been served this morning with a supplemental petition for allowance of fees to attorney and Receiver. I will check that during the noon recess. It was just handed to me a few moments ago by Mr. Whyte.

The Court: Then, Mr. Whyte, you will have to put on some evidence. * * * * * [14]

Mr. Whyte: Mr. Hallberg, will you take the stand, please?

ROY E. HALLBERG

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, please?

The Witness: Roy E. Hallberg.

Mr. Whyte: I wonder if I might have the original report and petition of the Receiver. My copy does not have the verification upon it.

The Clerk: Yes, sir.

The Court: The court should note for the record here that when the Receiver was engaged in the preparation of his report either Mr. Hallberg or Mr. Whyte—I don't recall which one—called me and said, "Do we have to set forth a particular amount or may we leave it to the discretion of the court and ask for a reasonable fee?"

I told them I would like for them to set forth in detail what had been done and if they wanted to leave it to the court to determine a reasonable amount that the court would not insist upon compliance with the rule that an amount shall [15] be prayed for. But they could leave it as reasonable or they would state a specific amount.

I was then told that Mr. Whyte felt he ought to put in a specific amount, which he did, and that Mr. Hallberg preferred to leave his to a prayer for reasonable amount.

Direct Examination

Q. (By Mr. Whyte): Mr. Hallberg, will you give us your address, please?

(Testimony of Roy E. Hallberg.)

A. 1202 Seaview, Corona del Mar.

Q. You were appointed as the Receiver in this matter on or about December 1, 1953, were you not?

A. That is correct.

Q. And you gave up your active duties of management and operation of the affairs of the former Richman Trust as of February 28, 1954, did you not?

A. That is correct.

Q. I direct your attention to the original of a document entitled "First and Final Report of Receiver and Petition for Allowance of Fee to Receiver", and more particularly to the verification on the inside of the blue backer to which that report and petition is annexed, and I ask you whether or not that is your signature which appears on the verification on the blue backer.

A. That is my signature.

Q. Are you able to state for the court, with reference [16] to each and all of the matters alleged from pages 1 to 14 of that petition and report, that is, everything exclusive of the exhibits, are each and all of the matters therein alleged true, to the best of your knowledge?

Mr. Enright: To which objection is made upon the ground it would call for a conclusion of the witness to state whether or not he or some agent or someone else did something that is alleged in 14 pages here. And it is a conclusion to state they did certain things that are stated here.

The Court: I understand the question to be whe-

(Testimony of Roy E. Hallberg.)

ther it is true, to the best of his knowledge and belief. That is a question often asked of people in executive capacity.

Objection overruled.

Mr. Enright: Would you read the question, Miss Reporter? (The question was read.)

The Witness: They are all true, to the best of my knowledge.

The Court: Let's have a moment to ask a question. Now, the Receiver hasn't asked for any specific amount. He says he will take whatever is reasonable.

What do you think is reasonable, Mr. Enright? You have looked over the report. Your client himself had charge of these same properties over a course of some years and has made charges for his services in connection with management.

Just what do you think would be a reasonable amount to [17] award this Receiver? There might not be any dispute here. You state it and we will ask him if that is acceptable to him.

Mr. Enright: Well, I can best answer the court this way: The man apparently was earning \$355.00 a month for his full time, at all times when he was acting as Receiver.

Apparently, he spent some week ends in rendering some services on this receivership. Had it not been for his manner in rendering his services and the manner in which he misrepresented, I feel, or misstated to this court his experience in handling or managing apartment house properties, and if it

(Testimony of Roy E. Hallberg.)

were not for his unclean hands in making those representations, I would be inclined to compensate him at his usual rate of compensation, which was during the past four years as follows:

He worked for the Morgan Construction Tooth Company, where he received \$100.00 a week drawing account.

He states for about six or seven months in 1951 he worked for Narmco—some manufacturer of fishing rods down here at Costa Mesa, where he received \$350.00 a month for about a year.

He is working now, as best I could find out, for the County of Orange, and hadn't missed work for the County of Orange when he was to be rendering his own personal services as Receiver. His compensation for the County of Orange, as I understand it, is \$350.00, or \$355.00 a month. [18]

I don't know what the man feels he is entitled to receive. It places a burden on us, your Honor.

So far as we are concerned, we found out later these apartment houses are pretty much running themselves, and I am satisfied the evidence will show that.

Now, for me to sit here and judge what we should pay to this man, who came into this receivership unsolicited by your Honor—I mean at your Honor's solicitation, as I understand it from your statement this morning, your Honor,—

The Court: Yes. He came in at my request. I called him and asked him if he would be available to serve as receiver.

(Testimony of Roy E. Hallberg.)

He wanted to know what it would involve, and I told him in a general way what it would be.

I made the call because, although my acquaintance with him has not been personally very extensive, I have known him casually and was a neighbor of his, and I have known of properties that I thought he was managing for an aged relative. It turns out from the deposition that it was his own property.

I had known from just casual conversation that he had had a responsible part in the management of considerable income property in Chicago. I had thought for a term of years. And it turns out now it was just a little over one year, if the deposition is right.

Knowing that Mr. Richman had carried on other ventures [19] while he managed these properties, I thought that while it would be part time, it would be a substantial part-time employment, and having confidence in the man's integrity and ability, I asked him if he would serve and he said he would.

Mr. Enright: I fully appreciate the situation, your Honor, so far as your Honor is concerned, as judge of this court. I hope you, in turn, will appreciate the position I am in here.

Now, the man says he managed property. Well, the deposition shows, and I am sure it is the fact—at least, I have the county records, County Recorder's Office checked, and I can produce the record if necessary—he operated an apartment over there, 14 units, for 11 months. That is the County Record-

(Testimony of Roy E. Hallberg.)

er's office records. That is the extent of his managing of properties anywhere comparable to—

The Court: What about the 400-unit apartments in Chicago?

Mr. Enright: Concerning those in the year of 1931, according to his own testimony in his deposition, he was employed, not by a receiver, as we were led to believe he was employed by a receiver, but, rather, the owner of bonds issued by a bank, and then by virtue of those bonds—I can't locate the man's name—he took over some properties. And apparently Mr. Hallberg worked for him for about a year in 1931 in Chicago, in collecting rents. That certainly is [20] different than managing property in Los Angeles in the year 1954 as a property manager. It certainly is completely foreign to what was represented to us as to the qualifications and experience of this Receiver.

The Court: Before he was appointed I asked all counsel in and made Mr. Hallberg available to them and invited them to ask questions, and if there were any questions about the qualification of the man to serve, the court would appreciate the questions being asked before the service was rendered, rather than at the completion of it.

However, no questions were asked then. Of course, I appreciate counsel didn't know him, but the field was open. They could have fished then as much as they would have wanted to.

Mr. Enright: At that specific time, your Honor, the transcript will show that I was engaged in

(Testimony of Roy E. Hallberg.)

trial in another court. I came to this court at 1:30 in the afternoon. I advised the court I relied upon the court's investigation of the proposed receiver, that the court being satisfied with his integrity and the receiver—and then making the representation to the court and to myself of his experience, I did not interrogate him and I do not feel that we are bound by his, shall I say, improper statements made on that day, which are as follows, at page 9:

“The Court: Just have a chair, Mr. Hallberg.

“The court has now given its decision in the matter, which I discussed with you last week, and I have asked counsel if there is any objection—of course, the defendant feels no doubt that he should have won the case, but since a receiver is to be appointed—whether they have any objection to you as the selection of the court as receiver.

“Now, they haven't announced any objection, but they don't know you. I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some years was in the management of real properties, sometimes in connection with court receiverships, and that your experience in it locally has been in the management of your own real properties, which were of income nature, and of similar properties owned by either your or your wife's relatives.

“Mr. Hallberg: That is correct.”

And so on. Those were the representations that were made to us. He certainly represented himself

(Testimony of Roy E. Hallberg.)

as being a person experienced to manage and operate.

The further point is this: Certainly, all parties understood this man was going to be the receiver in fact as well as in name. He went to work for the County or Orange instead of being receiver. [22]

How much we should compensate him I don't know. I would like to hear the man say what he feels he is entitled to for his week ends or his trips up here.

The Court: We had better take full evidence on what he did.

Mr. Whyte: Shall I proceed, your Honor?

The Court: Yes.

Q. (By Mr. Whyte): Again directing your attention to pages 1 to 14 of your "First and Final Report and Petition for Allowance of Fees to Receiver", as to each and all of the matters therein alleged, exclusive of those which were alleged on your information and belief, would you now testify here on the stand, under oath, subject to cross examination, that each and all of those matters are true to your own personal knowledge?

A. To the best of my knowledge each and every statement there is true.

Q. And as to each and all matters therein alleged in those 18 pages, which you state to be true according to your best information and belief, are you now willing to testify here on the witness stand under oath, and subject to cross examination, that

(Testimony of Roy E. Hallberg.)

those matters are true according to your best information and belief? A. Yes.

Q. Now, calling your attention to the schedules or exhibits which are attached to your "First and Final Report and Petition for Allowance of Fees to Receiver" filed herein on March 18, 1954, and directing your attention first to Schedule A, will you tell us by whom that Schedule was prepared, please?

A. This Schedule was originally prepared by Mr. Richman and presented to me, copy of which I signed at the time I received the various documents pertaining to all these apartments, the files, the various deeds, insurance policies, promissory notes, books of account, records, all current.

Q. Are you able to state, Mr. Hallberg, whether in your capacity as Receiver of all the real and personal property constituting the former Richman Trust you received from Mr. Richman, the former trustee, each and all of the assets, properties, documents, books, records, et cetera, which are set forth on Schedule A annexed to your report and petition?

A. I received all these insofar as I was able to check the individual items in about 12 or 14 cartons and also in the files; naturally, it would have taken months to go through every sheet that was there.

However, I did receive some additional information sometime in January on some parapet controversy that was not given to me originally.

Q. Is it your testimony that at least at some time during the course of your receivership, which continued from [24] on or about December 1, 1953,

(Testimony of Roy E. Hallberg.)

to and including February 28, 1954, you received each and all of the assets, properties, books, records, and et cetera, set forth on that Schedule?

A. I believe I did.

Q. You employed a bookkeeper in the course of your operations as Receiver of the real and personal property constituting the former Richman Trust, did you not? A. I did.

Q. What was the name of the bookkeeper originally employed by you? A. Mr. Harrison.

Q. Did you find it necessary or desirable to discharge Mr. Harrison from his position at some time during the course of your receivership? A. I did.

Q. Did you take any steps toward hiring somebody to replace Mr. Harrison as your bookkeeper?

A. I did.

Q. Whom did you employ?

A. A Miss Findeisen.

Q. May I inquire whether Miss Findeisen prepared this Schedule A, which is annexed to your petition and report?

A. I believe that part of this was prepared by Miss Findeisen and the balance by Miss Cosgrove, or Mrs. Hallberg.

Q. What position was Mrs. Hallberg or Miss Cosgrove—by the way, are they one and the same person?

A. They are one and the same. Miss Cosgrove is Mrs. Hallberg. For business reasons we have always used her maiden name.

Q. What position was Mrs. Hallberg occupying with reference to this receivership?

(Testimony of Roy E. Hallberg.)

Mr. Enright: I will object on the ground it would be a conclusion for him to state.

The Court: Well, he was supposedly in charge of the receivership insofar as the receiver ever is; the court being ultimately in charge.

I think he can state the part that the several employees had in the setup. What she actually did, she will have to tell. But he can tell what her position was.

The Witness: She was assisting me in a lot of the details connected with the operation of the buildings; because of her background and training she was quite effective in her handling of decorating, purchasing of materials, and overseeing the operations of the actual refurbishing of some of these apartments.

Mr. Enright: I move to strike the answer on the ground the answer is not responsive.

Secondly, on the ground the answer contains conclusions as to effectiveness and other similar terms.

The Court: Well, the answer does contain quite a bit of [26] conclusion. If it were allowed to stay, I would consider it a statement of a reason why he employed her, rather than what she accomplished.

Do you want it stricken, counsel?

We will strike the answer. Read the question. And we will ask for an answer of the question.

(The question was read.)

The Witness: She represented me in a good many of our contacts with service people, with the managers, with the various trades people we had to deal with.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Whyte): Are you familiar with the duties which were performed by Mrs. Hallberg in connection with this receivership?

A. I definitely am.

Q. What duties, in general, did she perform?

A. She performed various duties. Among them was overseeing the decorating of a lot of these apartments, the combining of color schemes to make the apartments more desirable, and the selection of a lot of materials that were used in draperies, in upholstering; all with one idea in mind, of getting the best we possibly could for the least amount of money.

The Court: We will suspend now until 2:00. We will recess until that time.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same day.)

Los Angeles, Wednesday, May 12, 1954, 2:00 p.m.

The Court: Knowing the bailiff would be away, I told him to arrange for a bailiff. I thought he had done so.

Mr. Enright: May it please the court, this morning the court inquired of counsel for Defendant Richman as to what he would consider as a reasonable fee.

During the noontime I have further considered. I was not prepared to answer this morning, other than the manner in which I did. And during the noontime I considered the matter and am willing to offer, one, that the Receiver and his attorney receive five per cent of the rents paid, less the

(Testimony of Roy E. Hallberg.)

bookkeeping expenses incurred by the Receiver for the salaries of Mr. Harrison and Miss Findeisen. It is less than \$1,700.00 from the Receiver's report, whatever that figure is exactly.

Secondly, that the fee due to the defendant Richman for his services in the month of November, listed as a payable or obligation of the trust, be paid to the defendant.

Thirdly, that the court hold that there should be added to the fund reported by the Receiver the following items:

A. \$785.00 petty cash, which the Receiver's report shows as being within his control as of February 28, 1945, the date of the termination of his active duty in accordance with the order of the court dated February 26, 1954, which [28] order directed the Receiver to retain in his control moneys in the bank and moneys under his control.

B. The February 26th, 27th, and 28th collections of rents, which were collected by the managers, and which were turned over to the plaintiff Lyda Tidwell's agents, particularly, according to the deposition of Mr. Hallberg, Mr. Udall. The report shows it to be approximately \$2,000.00, the report of the Receiver. We think it is approximately \$900.00. That could be subject to accounting, whatever the exact amount was, which I think can be ascertained.

C. That there be added to the fund of the Receiver—that doesn't mean he pays this money at all—the Oliver Cromwell payment in the amount of \$2,027.25. In other words, my point 3 is that these

(Testimony of Roy E. Hallberg.)

are certain sums of money that are subject to settlement between the plaintiff and the defendant, so long as the receiver reports the sum of money as being on hand; it is of no consequence it be physically on hand. But merely that it is reported as a part of the accounting, that those moneys were there.

As to who they are chargeable to, I think that is a matter for the plaintiff and defendant to settle. The contract, I am sure, is quite clear, they are chargeable to the plaintiff. But that is another matter. That is the second issue we have reserved that we are going to submit at pretrial. [29]

The Court: Your statement, Mr. Enright, brings into this offer, if it is an offer, matters which are involved in the dispute between plaintiff and defendant, so involved that I think we had better just go ahead and take the evidence.

Mr. Enright: Well, these items will involve moneys that are in the accounting.

Mr. Whyte: Mr. Hallberg, will you resume the stand, please?

ROY E. HALLBERG

called as a witness in his own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Mr. Whyte: Miss Reporter, will you kindly read the last question? (The record was read.)

Q. (By Mr. Whyte): What, if anything, did Mrs. Hallberg do toward collecting the rents?

(Testimony of Roy E. Hallberg.)

A. She made periodic trips every other day, practically, to the various apartments and picked up the moneys that were on hand and collected by the managers.

Q. What did she do with those moneys?

A. She brought those moneys into the office, made recordings of them and credited it to the proper buildings and deposit was made up and placed in the bank. [30]

Q. In what bank was that, Mr. Hallberg?

A. That was the bank over at Western and Third, I believe.

Q. Did you maintain an account there as Receiver of the assets of the former Richman trust?

A. I did.

Q. What, if anything, did Mrs. Hallberg do with reference to the bookkeeping?

A. She assisted Miss Findeisen in some of the bookkeeping work.

Q. Did she ever assist Mr. Harrison during the time that he was the bookkeeper for the estate?

A. I believe she did on one or two occasions.

Q. Did Mrs. Hallberg have anything to do with the purchasing of supplies for the various apartment houses?

A. She most certainly did, especially when the supplies were items that tended to enhance the appearance of the apartments.

Mr. Enright: I will move to strike the words "tended to enhance the appearance" as a conclusion of this witness.

(Testimony of Roy E. Hallberg.)

The Court: Motion granted.

Q. (By Mr. Whyte): What compensation, if any, did Mrs. Hallberg receive from the receiver-ship estate for the services which you have detailed?

A. She has not received anything. [31]

Q. Was she subject to your direction and control in the performance of those duties?

A. She most certainly was.

Q. Were Mr. Harrison, the original bookkeeper, and his successor, Miss Findeisen, subject to your direction and control in connection with the performance of their bookkeeping duties?

A. They certainly were.

Q. By the way, Mr. Hallberg, do you happen to know whether your wife is a college graduate or not?

A. She is a graduate of the University of Minnesota.

Q. What business training, if any, did she have either before she married you or the early years of your marriage?

A. She was with Payne-Weiner, a brokerage house. She was one of two investment counselors, two women counselors in New York.

Q. One of two women investment counselors?

A. That is right. And her school training was business administration.

Q. Do you happen to know whether she holds a real estate broker's license in the State of California?

(Testimony of Roy E. Hallberg.)

A. She holds a real estate broker's license in the State of California.

Q. You have stated that Mrs. Hallberg received no compensation for the services she performed in connection with [32] the receivership. What compensation, if any, did Mr. Harrison and Miss Findeisen receive for their bookkeeping duties?

A. Mr. Harrison received \$450.00 a month and Miss Findeisen \$300.00 a month.

Q. For how long, approximately, did Mr. Harrison serve as your bookkeeper?

A. About two months, approximately.

Q. And Miss Findeisen served for how long?

A. The balance of the term.

The Court: Were they same positions, that is, did the lady succeed Mr. Harrison or did she do a different type of work?

The Witness: She succeeded Mr. Harrison, to the same work.

Q. (By Mr. Whyte): Was that a full time bookkeeping job? A. It was.

Q. Drawing your attention again to Schedule A annexed to your "First and Final Report and Petition for Allowance of Fees", I believe you stated on your direct examination before the noon recess that this Schedule was prepared by Miss Findeisen and Mrs. Hallberg, is that correct?

A. That is correct.

Q. Do you know, of your own personal knowledge, whether or not that Schedule was prepared from the books of account [33] kept by the Receiver, or was that Schedule prepared from—

(Testimony of Roy E. Hallberg.)

Mr. Enright: Just a minute. May I have your last part—

Mr. Whyte: If I may withdraw the question, I will frame it again in a clear enough tone of voice so we will all understand it.

Q. (By Mr. Whyte): Drawing your attention to Schedule A annexed to your Report and Petition for Fees, the Schedule is headed "Inventory of All Known Assets and Properties Constituting a Part of the Former Richman Trust Over Which the Receiver Assumed Possession, Custody and/or Control", my question to you is, did you receive from Mr. Richman receipts showing the assets and properties of the former Richman trust which he surrendered to your possession, custody and/or control?

A. He listed all these, all the items that he gave over to me, and I signed a receipt for them. They all were included with the exception, as I believe I mentioned before, that the file that pertained to the Parapet controversy with the City Building Department at one of the buildings, that was received by me some time in January. In other words, I did not get all of the files, apparently, at the time I took over the buildings, or the management of these buildings.

Q. Speaking now only of the receipt which you said you signed, and in connection with the delivery by Mr. Richman to you of the assets and properties of the former Richman trust, [34] were all of the items listed on this Schedule A, with the excep-

(Testimony of Roy E. Hallberg.)

tion of the Parapet file you have referred to, itemized on those receipts?

A. Yes. The files consisted of various and sundry papers, and there were any number of files there. I did not go through each individual file, to see whether it pertained to that particular file heading that was on the file.

However, I assumed they were, inasmuch as he had taken them right out of his file there and out of his own records, that they did pertain to those buildings. But actually this was all information regarding earlier transactions.

Q. Were those receipts prepared in Mr. Richman's office, if you know?

A. The original receipt was prepared in Mr. Richman's office, and I signed it.

Q. Did you check the properties and assets turned over to you against the receipts, to determine whether or not you received all of the assets and properties shown on the receipts?

A. As far as I could, I did, yes.

Q. Is it your testimony that the only item which you received that is not shown on the receipt is a file with reference to the Parapet at the Oliver Cromwell? A. That is the Canterbury.

Q. The Canterbury? [35]

A. That is right, that was the only one.

Q. Now, are you able to state whether or not this Schedule A annexed to your report and petition, which you have testified was prepared by Miss Findeisen and Mrs. Hallberg, was prepared on the

(Testimony of Roy E. Hallberg.)

basis of the receipts furnished you by Mr. Richman? A. They were, definitely.

Q. You say they were. You mean—

A. Schedule A was prepared from the original file which I signed and checked as far as I could, and turned over to the subsequent management.

Q. When you say the original file that you signed, do you refer to the original receipts which you signed?

A. The original receipts which I filed, yes—which I signed.

Q. Thank you. Directing your attention further to Exhibit B, or, rather, Schedules B, C, and D attached to your Report and Petition for Allowance of Fees, first directing specific attention to Schedule B, which is headed "Schedule of Receipts and Disbursements of Roy E. Hallberg, as Receiver of the Assets of the Former Richman Trust from December 1, 1953, to and including February 28, 1954," to that Schedule is attached several exhibits, being Exhibit I, Exhibit II, Exhibit III and Exhibit IV.

Are you able to tell us who prepared that Schedule B? [36]

A. That was prepared by Mrs. Hallberg and Miss Findeisen from the books and records which we had in the office.

Q. Will you briefly describe what those books and records consisted of?

A. They consisted of cash receipts, cash disbursements and general ledger.

(Testimony of Roy E. Hallberg.)

Q. Did you have a journal of any kind?

A. There was a journal there that had been kept up, yes.

Q. Did you continue to keep up a journal during your period of—

A. Kept a journal up to the end of the year, so we wouldn't be breaking the accounting records for the calendar year.

Beginning January 1st we changed the system a little bit, so that we could more adequately make comparisons.

Q. Then what did the books and records of the receivership consist of after January 1, 1954?

A. Well, it consisted of a cash receipts and cash disbursements book and the general ledger.

Q. Were you the custodian of those records, that is to say, were they kept in your possession and under your control? A. They were.

Q. Were those records kept in the regular course of the business of the receivership? [37]

A. They were.

Q. Were the entries made in the ledger and the cash receipts and disbursement books made at substantially the same, at substantially the same time as the transactions which they purported to reflect?

A. They were up to a point. After the first of the year Mr. Harrison began making entries on working sheets and was not transferring them to the ledger, which he had not succeeded in setting up.

Although we had the rough ledger set up he con-

(Testimony of Roy E. Hallberg.)

tinued to use working sheets and pencil notations, which I changed when we—when Mr. Harrison was terminated, when his work with us was terminated, and within a short period we got everything in order and brought it up to date.

Q. About when were the entries made by Mr. Harrison, on the work sheets you have mentioned, transferred to the original books of account?

A. In February.

Q. 1954? A. Correct.

Q. Calling your attention now to Schedule C attached to your Report and Petition, which Schedule is headed "Disbursements Made by the Receiver as Directed by the Court Covering Liabilities Incurred Prior to February 28, 1954, but Not Paid Until After That Date", who prepared that [38] Schedule, if you know?

A. Mrs. Hallberg and Miss Findeisen.

Q. Was that Schedule also prepared on the basis of the books of account kept by the receivership?

A. Books of account, the invoices that came in and records that we had there in the office.

Q. With reference to this caption on Schedule C, "Disbursements Made by the Receiver Covering Liabilities Incurred Prior to February 28, 1954, but Not Paid Until After That Date", why were the items listed on this Schedule not paid until after February 28, 1954?

A. We hadn't received a lot of the invoices on these, on the items represented in this Schedule, until after February 28th. And we paid those from

(Testimony of Roy E. Hallberg.)

moneys we had on hand after a discussion with you and Judge Tolin, and they were later paid.

Q. Is it a fact that the items listed on Schedule C are items reflecting materials delivered or services rendered to the receivership on or prior to February 28, 1954? A. They are.

Q. Now, with reference to the phrase in the title to the Schedule, "As Directed by the Court", did you have any conversation with the court in regard to the payment of those items?

A. I did. [39]

Q. Will you please state when that conversation took place?

A. That conversation took place either the Sunday following the termination of the receivership or the week following. I believe it was on the Sunday, the 28th of February.

Q. Perhaps I can refresh your recollection, Mr. Hallberg. Do you recall that I came down to visit you and Mrs. Hallberg at Corona Del Mar for a Sunday of golf at your home? A. Yes.

Q. Do you recall that I visited you there on Sunday, March 7th?

A. Yes, Sunday, March 7th, because you were there at the time I talked to the Judge.

Q. This conversation you had with the court, was that in person or over the telephone?

A. It was over the telephone.

Q. Please state what was said with reference to the payment of these items listed on Schedule C?

A. There are a number of items there that were

(Testimony of Roy E. Hallberg.)

indebtedness incurred during the month of February and which I felt I was personally responsible for. I phoned Judge Tolin and asked him whether I should go ahead and pay these bills with the moneys I had on hand. He so advised me.

Q. When you say "he so advised me", did he advise you [40] to pay them?

A. He advised me to pay them.

Q. Now, directing your attention to Schedule D annexed to your Report and Petition, which is headed, "List of all Known Creditors of the Former Richman Trust with Names, Addresses and Amounts of Claims, including both Specific and Contingent Claims, as of March 10, 1954," who, if you know, prepared that Schedule?

A. Mrs. Hallberg and Miss Findeisen.

Q. Was that Schedule also prepared on the basis of the entries made in the original books of account kept by the Receiver?

A. I do not—Inasmuch as we were operating these books on a cash basis, I do not believe they are reflected in the records. The only time they get into the record is when you pick them up as an accrual or pay them by cash.

Mr. Whyte: At this time, having laid the foundation, I believe, for the admission in evidence of the "First and Final Report of Receiver and Petition for Allowance of Fee to Receiver" filed herein on March 18, 1954, I now offer in evidence that document.

Mr. Enright: Objection is made to the pleading,

(Testimony of Roy E. Hallberg.)

the first 14 pages of pleading. There is no objection made to the Schedules themselves, itemization.

The Court: The Schedules will be received. The first [41] pages being largely pleading matter, I think we had better not receive them.

Mr. Whyte: May I address the court for a moment in that connection?

The Court: Yes.

Mr. Whyte: I believe the witness has testified that each and all of the matters alleged in the first 14 pages, except as to those matters on information and belief, about which he testified separately, are true, and that he was now able to testify here on the witness stand, under oath and subject to cross examination, that each and all of those matters set out are true as of his own knowledge.

He has further testified that each and all of the matters set forth in that Report and Petition, on information and belief, that he is willing to swear today on the witness stand, under oath, subject to cross examination, are true according to his best information and belief.

It seems to me that that furnishes a foundation for the admission in evidence of everything mentioned in the Report. Otherwise, I would have to ask him about each individual item separately.

The Court: I think it does. Of course, it does contain many things which are semi-argumentative and does state a number of conclusions, but it is a report. It is a report from an officer of the court to the court. [42]

(Testimony of Roy E. Hallberg.)

I will reverse myself, Mr. Enright. I think the whole thing is admissible. It will be received.

Mr. Whyte: Thank you, your Honor. I should like to ask some questions concerning the number of individual apartments and the range of rentals at each of the five apartment houses which form the principal part of the assets of the former Richman trust.

Q. (By Mr. Whyte): First, with reference to the Canterbury Apartment Hotel, located in Hollywood, California, are you able to state how many individual apartments were contained in that apartment hotel?

A. May I look at a note I have?

Q. Surely, you may refresh your recollection.

A. The first one is the Canterbury.

Q. That is true.

A. 90 apartments. They range from \$65.00 to \$175.00.

Q. By that you mean that the lowest apartment, lowest-priced apartment at the Canterbury rents for \$65.00 and the highest-priced apartment rents for \$175.00?

A. That is correct.

Q. Next, with reference to the Fountain Manor Apartment Hotel, located in Los Angeles, California, are you able to state how many individual apartments are contained in that building?

A. There are 91 apartments, and those rents range [43] approximately from \$65.00 to \$135.00.

Q. Will you please give us the same information with regard to the Oliver Cromwell, the West-

(Testimony of Roy E. Hallberg.)

ern Arms and the LaLoma Apartment Hotels, all located in Los Angeles, California?

A. The Oliver Cromwell has 94 and their rates range from \$45.00 to approximately \$115.00.

The Western Arms, 76 apartments, and approximate range is from \$50.00 to \$95.00.

LaLoma, 55 apartments, with the approximate range of \$45.00 to \$57.57.

Q. As to each of the five apartment houses, is it your testimony that those rental ranges which you have mentioned are approximate figures?

A. Yes, because—Well, they are.

Q. Mr. Hallberg, during your tenure of office as Receiver, did each of the five apartment buildings have a separate resident manager?

A. They did.

Q. What compensation, if any, did those separate resident managers receive from the trust estate?

A. They were paid a salary plus an apartment.

Q. Were those managers subject to your direction and control as Receiver of the properties constituting the former Richman trust?

A. They were. [44]

The Court: How were they paid? Of course, Mr. Hallberg don't know how those managers were paid prior to the trust.

Did the trust bear the expense or did that come out of the fee that was paid to Mr. Richman?

Mr. Enright: The trust paid their expense, the

(Testimony of Roy E. Hallberg.)

same identical arrangement as carried on by the Receiver; no change at all by the Receiver.

The Court: Thank you.

Q. (By Mr. Whyte): During your tenure of office as Receiver were you responsible for the employment of personnel and their discharge, if that became necessary? A. I was.

Q. Did you find it necessary on any occasion to discharge an agent or employee of the receivership? A. Yes, I discharged Mr. Harrison.

Q. During the course of your tenure of office as Receiver, were you charged with the duty of planning the accumulation of moneys from the receivership properties to meet substantial current obligations, such as taxes or insurance?

A. I took over the properties, and there was a question whether or not we would be able to meet the tax payment that had to be made in December. We succeeded in meeting the payment, and although it left us very short for operating moneys, we managed to carry on. [45]

Q. Did you then plan the accumulation of moneys from the receivership in the form of rents from these apartment houses or other properties in such a way as to meet current obligations of the receivership as they became due?

A. As much as we were a little short on cash, we had to plan everything.

Q. What, if anything, did you do about the insurance policies covering the five apartment buildings?

(Testimony of Roy E. Hallberg.)

A. Well, insurance policies that were in force were allowed to continue. When a policy expired I placed the insurance with a company who had a lower rate by 10 per cent over the standard rate, plus a dividend of approximately 25 per cent, which would be rebated or the dividends would be paid to the receivership or the trust at the expiration of those policies.

Q. What type of an insurance policy was that, Mr. Hallberg?

A. Those are fire insurance policies.

Q. Did you negotiate a new fire insurance policy with this company you have mentioned on all of the apartment buildings in the trust estate?

A. No, sir, I placed it with the LaLoma and also for the Oliver Cromwell.

Q. What, if anything, did you do with reference to the compensation insurance policies covering the respective [46] apartment buildings?

A. The policy had, or the—yes, the policy had been issued and a payment made. I stopped the payment on the check with the full knowledge, or, the full knowledge of the insurance broker, because it included some items that were Mr. Richman's personal items; we rewrote it.

Q. What items were those?

A. Oh, I think there was an automobile connected with it and some servants.

Q. Are you telling us that some of Mr. Richman's domestic servants and his automobile and other personal items were included in the compen-

(Testimony of Roy E. Hallberg.)

sation policy covering one or more of these five apartment buildings at the time you took over this receivership?

A. Those items had to be taken out and we rewrote the policy, and it was placed with the same broker.

Q. When you say "placed with the same broker", by that you mean a new policy was written with the same company and broker as—

A. That is correct.

Q. —previously? A. That is correct.

Q. As to each of these questions I am directing to you, regarding what you did in connection with the receivership, are you answering as to something that you did in person, [47] Mr. Hallberg, and not through an agent?

A. What are you referring to?

Q. For instance, when I have asked you about these insurance negotiations that you had, did you do that personally?

A. Yes, I did that personally.

Q. Now, did you inspect the five apartment buildings from time to time, to determine if their physical plants were in good working order?

A. I certainly did inspect them, and as far as I could ascertain, I checked the physical property.

Q. When you say you checked the physical property, what do you mean? Did you look at the boilers?

A. I went down to the boilers, refrigeration equipment and structures.

(Testimony of Roy E. Hallberg.)

Q. Did you look at the water heaters?

A. Looked at the water heaters, yes.

Q. Did you look at the basements?

A. I certainly did.

Q. Did you examine any of the vacant apartments to see if—

A. I certainly did. I visited many a vacant apartment.

Q. You did that with reference to all five of the apartment houses?

A. I was in vacant apartments in all five buildings. [48]

Q. Did you examine the boilers, the refrigeration systems, the heaters and the basements in all the five apartment buildings?

A. I certainly did.

Q. What, if anything, did you do with reference to the repair of refrigeration equipment at the Western Arms?

A. Western Arms, about the middle of January—I am not positive of the exact date at this time—they had a box that refused to operate, turned cold. The manager, as she had been instructed, called the California Refrigeration Company. The California Refrigeration Company had been handling the buildings for quite some time prior to my taking over, and they went to work on it and they worked all day.

Mrs. Hallberg was on—in the building twice during that day and spoke to them.

(Testimony of Roy E. Hallberg.)

Mr. Enright: May it please the court, I assume the witness—

Q. (By Mr. Whyte): I am asking for what you did, Mr. Hallberg.

The Court: Yes. We can't take from you what Mrs. Hallberg said.

Mr. Enright: I assume that the witness has so far testified what he actually did or saw. If not, I would prefer that his testimony be stricken.

Q. (By Mr. Whyte): Proceed, Mr. Hallberg, and confine [49] yourself to what you did or saw personally.

A. The report came in to me that evening that we were having difficulty with that building. I was told that the refrigeration people were on the job.

The following morning I found that they had let all the gas out of the refrigeration system. It is a flooded system. Why they let all the gas out—Well, that is really a question.

It seems to be a difference of opinion as to the respective merits of emptying all the gas out, although some companies will pump the gas into a receiver and retain it and let it back into the system again.

I found out that the men who were repairing it had choked off or had cut out about eight boxes before they finally had the entire system down. And I also found out that the manager of the building had overheard the telephone conversations between the workman and his office. Apparently, he didn't know what to do with it.

(Testimony of Roy E. Hallberg.)

I got that information the following morning. And the manager of that apartment building had called in another refrigeration company, to check and see what could be done.

In the meantime the original company, California, had given us an estimate of approximately \$900.00 to repair the system, without giving us a guaranty. The other firm said they could get that, could get this in working order at a [50] good deal lower cost, and I gave them instructions to go ahead.

The first company wanted to do, wanted to know what to do, and I had a conference with both of them, with both refrigeration companies, and I told the second one, whose name I believe is the Normandie Refrigeration Company, to go ahead and finish the job at a considerably lower figure and without having the system tied up for the length of time the first company said they would do it, they would have to have it tied up.

Q. On this matter of your inspection of the boilers, the refrigeration system, the water heaters and the basements, physical plants, vacant apartments at these different apartment buildings, were you familiar with the workings of that type of physical plant from any previous experience which you had had? A. Oh, yes.

Q. Will you state what experience had qualified you for an appraisal of the operation of that physical part of the building?

A. Every one of the buildings we had in Chi-

(Testimony of Roy E. Hallberg.)

cago, when we were operating a receivership, had boilers, heating plants, hot water boilers, and I think I had a fair working knowledge of the plants.

Q. Are the buildings which you operated in Chicago, [51] that you have just averted to, are those the buildings in connection with the receivership in 1931 of a particular bank in Chicago, which you referred to in your deposition?

A. That is correct.

Q. Did you do anything about changing the accounting system which had been established and maintained under Mr. Richman's regime?

A. Yes, I did. I tried to set up a system whereby we could have direct comparisons, one building against the other, for a period of months, and also cross reference of your checks, so that they could be traced very quickly through your records, book records, and the name of the account to whom you paid, or the account to whom the checks were issued.

It was a little confusing to try to locate bills that have been paid prior to December 1st in the method they were kept. The bills were supposedly clipped together for a given building, but often-times a service was rendered to two or three buildings and if you wanted to find out which building—if you tried to find a bill for a given building, if it happened to be in conjunction with the payment of another building, you had considerable difficulty looking some of those bills up.

I changed that so it would be more easily found,

(Testimony of Roy E. Hallberg.)

and we set up a record system which I think was quite adequate and simple, and gave a lot of information, without an awful lot [52] of research, if I may call it that in the record.

Q. Can you be a trifle more specific on this point: Is it the fact that under the accounting system kept by Mr. Richman that the profit and loss of the entire five apartment buildings was reflected as a whole only, or were you able to tell from the accounts kept by Mr. Richman what was the profit and loss from each individual apartment building?

A. It would take quite a bit of work to get that information out. You would have to analyze the accounts first.

Q. When you changed the accounting system in the manner you have described, was it possible to tell easily and quickly what profit or what loss had been sustained from each individual apartment building?

A. Yes, with one exception. There was a question as to whether certain expenditures, which had been carried into the improvement account, should have been classed as improvements. I know why it was done, but from purely—from a truly accounting standpoint some of the expenditures were written into the improvement account, which I personally do not believe should have been placed in that account.

I know why it was done. There was a reason for it. But because of that you would have a little difficulty arriving at a quick decision as to the amount

(Testimony of Roy E. Hallberg.)

of profit and loss, because some of the expenditures for painting and things like [53] that definitely, in my opinion, were expense and should not have been capitalized.

Q. Then can you briefly summarize for us, in a few words, the advantages which accrued from your system of bookkeeping instituted under your regime as Receiver, as compared with the system of bookkeeping you found when you took office?

What were the advantages that were obtained through the change in accounting you instituted?

A. Well, I believe that with my system—of course, in two months you are not going to be able to tell much, but over a period of time these records would have reflected a comparative month-by-month report of the operation of this individual building.

Actually, what you want records for is to be able to see whether you are making money on the individual buildings, to see whether or not it is economically feasible or sound, to see from an economic point of view you are working in the right direction, so you are making money.

Q. Did you instruct the bookkeepers, Mr. Harrison and Miss Findeisen, in regard to the method of setting up the new accounting system?

A. I had a little difficulty getting Mr. Harrison to see how this should have been handled. He finally agreed it probably was a better way of handling it, but he had a habit of making all his entries— [54]

(Testimony of Roy E. Hallberg.)

Q. Mr. Hallberg,— A. Pardon me.

Q. —We want to keep this responsive.

A. All right.

Q. My question was, did you instruct Mr. Garrison and his successor, Miss Findeisen, in the matter of setting up and maintaining this new bookkeeping system, which you have mentioned?

A. I did.

Q. During the course of the receivership, did you personally ever assist actively in the bookkeeping duties? A. I did.

Q. What training and experience had you had with regard to bookkeeping?

A. Well, I worked for J. L. Maulpey when I was going to school, doing public accounting.

Q. What did you major in at college?

A. I was in the school of business administration.

Q. At what school?

A. Northwestern University.

Q. What degree did you receive there?

A. Bachelor of Science and Commerce.

Q. What year did you receive that?

A. 1927.

Q. During this course of receivership in Chicago you [55] mentioned, did you have anything to do with the books governing the operation of the various properties in that receivership?

A. I did.

Q. What was your connection with those books?

A. I helped set up the original accounts, the

(Testimony of Roy E. Hallberg.)

original records, and had a full time bookkeeper who carried it on.

Mr. Whyte: In order that the record may be complete, I think this is as good a time as any to offer in evidence the whole of Mr. Hallberg's deposition, pursuant to Rule 26 of the Federal Rules of Civil Procedure. I so offer the entire deposition in evidence at this time.

The Court: Have you had a chance to look at it?

Mr. Enright: No, I did not have a chance during the noon recess. I understood it was offered earlier subject to my making a motion as soon as I have a chance to examine it.

The Court: You wish to have an opportunity to read it further before the court rules on the offer?

Mr. Enright: Yes, I would, your Honor.

The Court: All right. We will take the offer of the deposition under submission.

Mr. Whyte: Thank you, your Honor. May I state that I will be through with Mr. Hallberg's direct examination shortly.

I would like, if possible, to put on an expert witness as to the reasonable value of his services, who is here in the courtroom, if Mr. Richman would waive his cross examination [56] of Mr. Hallberg, until after the expert has testified.

Mr. Enright: Yes.

Mr. Whyte: Would that be convenient, Mr. Enright, to you?

Mr. Enright: Well, I will convenience you.

Mr. Whyte: So I offer the deposition for the

(Testimony of Roy E. Hallberg.)

purpose of having the foundation in the evidence for the testimony of the expert witness whom I will put on a few minutes, as to the reasonable value of the services.

I would like, if possible, to have that deposition in subject to whatever motion to strike the court may wish to entertain.

The Court: Under these circumstances, we all know this Rule 26 will make some part of this deposition proper, and probably all of it; I don't know.

So it will be admitted subject to a motion to strike. By motion to strike, we can then weed out the extraneous parts of it.

Mr. Whyte: Thank you.

Q. (By Mr. Whyte): Did you petition this court for authority to pay Christmas bonuses to the employees of the former Richman trust?

A. I did.

Q. Was that petition granted?

A. It was. [57]

Q. Did you distribute bonus checks to those—Now, when I say "you"—Did your bookkeeper distribute bonus checks to those employees pursuant to the granting of that petition?

A. They were distributed, yes.

Q. Did you also petition this court for authority to renovate individual apartments in each of the five apartment houses? A. I did.

Q. Did you appear in court personally upon

(Testimony of Roy E. Hallberg.)

the hearing of that petition and testify from the witness stand? A. I did.

Q. Was that petition for authority to renovate individual apartments granted? A. It was.

Q. Pursuant to the granting of that petition, did you personally carry out a program of limited renovation? A. I did.

Q. Will you tell us what you did in that regard?

Mr. Enright: I assume the question is what he did personally?

Mr. Whyte: That is right.

The Witness: I directed that certain of the vacant apartments that were pretty well worn, shall we say, be redecorated—not along the lines they had been painted—[58] but to make them a little bit more colorful, and to repair some of the broken tiles in some of the buildings. We had a lobby that had to be painted, and matters similar to that.

Q. (By Mr. Whyte): Did you ever check the rentals in the neighborhood of any of these apartment buildings? A. I did.

Q. In what particular neighborhoods did you make a check of comparative rentals?

A. Out around the Western Arms and the Oliver Cromwell. Also up at the Fountain Manor.

Q. Please tell the court what you personally did in checking the rentals in the neighborhood of the Western Arms.

A. I went in to one building south of the Western Arms and found it to be occupied by colored,

(Testimony of Roy E. Hallberg.)

about two blocks south, maybe a long block south. And there is a building directly behind it, and I went in there and checked the rentals there.

Q. All right. Tell us what you did with respect to checking the rentals in the neighborhood of the Oliver Cromwell.

A. I went into buildings on the street and the street behind, both near to Wilshire and north of the building, on streets adjacent to Normandy.

Q. When you say you went in those buildings, did you ascertain what rents were being charged at those locations? A. That is right. [59]

Q. Please tell us what you personally did in regard to appraising the rentals in the neighborhood of the Fountain Manor.

A. I went in one building south there. I directed Mrs. Hallberg to check some of the others in the area. And we got a fair idea of that locality.

Q. Did you do anything in regard to the tax returns to be filed by the receivership estate?

A. Yes. That is the fiduciary return.

Q. Please tell us what you did in that connection toward preparing and filing that return.

Mr. Enright: To which objection is made on the ground the return is the best evidence. Apparently, there is some uncertainty whether the return is available any more.

The Court: What he did with respect to preparation of it would bear upon the service he rendered. Objection overruled.

The Witness: I went—made two calls on the De-

(Testimony of Roy E. Hallberg.)

partment of Internal Revenue. Miss Brun was contacted, who is in charge of the particular department, and she made the suggestion that the return be carried out along the manner of previous returns; that was done.

Q. (By Mr. Whyte): Directing your attention to Schedule B attached to your Report and Petition for Fees, can you point out to us on this Schedule whether it reflects the total or gross receipts received from receivership properties [60] during the three-month period of your receivership?

A. Inasmuch as these—as the buildings are operated on a cash basis, the total receipts here are the amounts of money we received.

Q. On page 2 of Schedule B there is a notation, "Total Receipts for Period from December 1953 to and including February 28, 1954". And following that there is a breakdown for the Canterbury, Fountain Manor, LaLoma, Oliver Cromwell, Western Arms, Other, and then a total figure of \$94,-153.59.

What does that figure, which I have just quoted, reflect?

A. That reflects the receipts during the three-month period.

Q. Does that figure include the rentals for February 26th, 27th and 28th from one or more of the five apartment houses?

A. Well, without the records it is pretty hard to state at this time whether some of these rents

(Testimony of Roy E. Hallberg.)

were received on the last day of—that we collected rents were for the month following or whether they were for that month and a little bit delinquent in coming in.

Q. Mr. Hallberg, you operated on a cash receipts and disbursements basis, did you not?

A. Yes.

Q. Then this figure \$94,153.59 represents cash [61] actually received during the three-month period of the receivership, is that correct, sir?

A. That is correct.

Q. Do I understand your testimony to be you cannot state definitely at this time whether that total includes the rents from the five apartment houses or one or more of them for February 26th, 27th and 28th?

A. No, it would be pretty hard to tell.

Mr. Whyte: I have no further questions for the direct examination of Mr. Hallberg, your Honor.

The Court: Then we will take a brief recess, after which we will hear your expert witness, and then return to Mr. Hallberg for a cross examination.

Mr. Whyte: Thank you.

(Witness temporarily withdrawn.)

The Court: We will take a 10-minute recess.

(Short recess taken.)

Mr. Whyte: I have one or two short questions to ask Mr. Hallberg, if I could recall him, please.

The Court: Yes.

ROY E. HALLBERG

called as a witness in his own behalf, having been previously duly sworn, resumed the stand and testified further as follows: [62]

Direct Examination—(Continued)

Q. (By Mr. Whyte): Immediately before the recess I asked you whether or not the rents for February 26th, 27th and 28th were included in this total receipts figure of \$94,153.59 shown on Schedule B attached to your report, and I understood you to testify that you could not be certain whether they were included or were not included.

Calling your attention to a footnote on the second page of Schedule B, preceded by an asterisk and reading, "Receipts for the month of February include those only for 25 days", does that refresh your recollection as to whether or not February 26th, 27th and 28th receipts, rental receipts were included in the figure of Ninety Four Thousand Odd Dollars?

A. The three days you refer to were not included in these figures, and the asterisk with the explanation there takes care of that. That was in there to explain it.

Mr. Whyte: All right. No further questions.

(Witness temporarily withdrawn.)

Mr. Whyte: Mr. Jefferson Mann.

JEFFERSON A. MANN

called as a witness on behalf of the Receiver, being first duly sworn, testified as follows:

(Testimony of Jefferson A. Mann.)

The Clerk: Please be seated. Your full name, sir.

The Witness: Jefferson A. Mann. [63]

Direct Examination

Q. (By Mr. Whyte): Where do you reside, Mr. Mann? A. In Glendale, California.

Q. What is your business address?

A. 624 Security Building, 510 South Spring Street, Los Angeles.

Q. In what business are you engaged?

A. I am a licensed real estate broker and real estate appraiser.

Q. For how long have you been engaged in the State of California in real estate sales or activities connected with real estate?

A. Since 1933, which is 21 years, with the exception that prior to that time I engaged in some real estate activities on my own account.

Q. Were you at any time ever connected with R. A. Rowan & Co.? A. I was.

Q. What is R. A. Rowan & Co.? What is the nature of their business?

A. R. A. Rowan & Co. real estate concern, which has been operating for over 50 years. Their office is located in the Rowan Building at 5th and Spring Streets, Los Angeles. Their principal business is the sale, leasing, management and [64] the insurance business. They manage, the last time I heard the records, some fifty-five hundred units of property of all kinds. They specialize particularly

(Testimony of Jefferson A. Mann.)

in income properties of all kinds, and industrial.

Q. Are you able to tell us how R. A. Rowan & Co. compares in size with other real estate companies in the city?

A. To the best of my knowledge they are the largest management company, real estate management company in the West. I think they are second in size in the volume of sales and leases in the West.

Q. When did you join that organization?

A. July 15, 1933.

Q. For how long did you remain in their employ?

A. Until September of 1953, with two exceptions. In 1937 I was hired by the General Petroleum Corporation, in their Real Estate Department, for some special activity. And in 1939 I returned again to Rowan & Co.

In 1942 I was loaned to the United States Government, U. S. Corps of Engineers, Real Estate Division, for the purpose of acquiring various properties for use of the Army during the war period.

I returned to Rowan & Co. in December of 1945 and continued there until I went into my own activities in September of 1953. [65]

Q. What was the nature of your duties while you were employed by Rowan & Co.?

A. I sold, leased, rented, inspected, appraised, obtained management properties. I am also a licensed real estate—insurance solicitor. My chief

(Testimony of Jefferson A. Mann.)

activities were the sale, leasing and appraising of real property.

Q. Can you tell us some of the concerns for whom you sold or appraised or leased real property in this area?

A. I have appraised property for various government bodies, such as the Federal Housing Authority, United States Government, State of California, both the Highway Division and Finance Division, Corporation Commissioner, the R.F.C., the University of California.

I have appraised property for and appeared before the Income Tax Division, testified in the Superior Court, Federal Court, appraised property for the Los Angeles Realty Board, Chamber of Commerce, American Red Cross and various banks, such as Security Bank, Citizens National Trust & Savings Bank, Trust Department, and for the bank itself, and Farmers & Merchants Bank, Wells Fargo and Union Trust Company of San Francisco. I have appraised for various oil companies, such as the General Petroleum, Texaco, MacMillan Petroleum, Fullerton Oil, Century Oil, various railroads, and appraised for many corporations.

I have leased or sold to many corporations. I have [66] been appointed by Superior Court as referee, by Superior Court Judge Thurmand D. Clarke. I have appraised various estates, such as the banking estate of William A. Garland Estate, the Dory Lankershim Estate, the Lulabell Lloyd, deceased wife of Ralph Lloyd, and the Lankershim

(Testimony of Jefferson A. Mann.)

Estate. I have appraised land and properties for the Rodeo Land & Water Company of Beverly Hills, the Janss Investment Company of Beverly Hills, the Janss Real Estate Company and the Auto Club of Southern California, and many, many others.

Q. You mentioned that from about '42 to 1944 you were with the United States Army Engineers in their Real Estate Division?

A. That is correct.

Q. What type of service did you perform for them?

A. The acquisition for use by the U. S. Government of all types of government land in southern California, south of San Luis Obispo, Arizona, Nevada, and as far south as the Mexican line in Arizona, and in California. That constituted all types of properties, from airport landing fields to small lots for use of barracks or balloon sites, large warehouses; all types of properties.

Q. Are you familiar with apartment buildings, Mr. Mann? A. I am.

Q. What has been your experience with them?

A. I have sold large apartments. I have appraised a [67] number of them.

Q. Mr. Mann, please assume the following facts:

On November 30, 1953, by order of this court, Roy E. Hallberg was appointed Receiver of all the real and personal property constituting the former Richman Trust. On December 2, 1953, he posted a bond in the sum of \$75,000 to insure the

(Testimony of Jefferson A. Mann.)

faithful discharge of his duties as Receiver. On or about the same date he took possession of the following properties constituting the principal assets of the former Richman Trust, to wit: five apartment houses, being the Canterbury Apartment Hotel located in Hollywood, California, and the Fountain Manor Apartment Hotel, the Oliver Cromwell Apartment Hotel, the Western Arms Apartment Hotel and the La Loma Apartment Hotel, all located in Los Angeles, California.

The Canterbury Apartment Hotel contains 90 individual apartments whose rents range from approximately \$65.00 to \$175.00.

The Fountain Manor Apartment Hotel contains 91 individual apartments whose rents range from approximately \$65.00 to \$135.00.

The Oliver Cromwell Apartment Hotel contains 94 individual apartments whose rents range from approximately \$45.00 to \$115.00.

The Western Arms Apartment Hotel contains 76 individual apartments whose rents range from approximately \$50.00 to [68] \$95.00.

The La Loma Apartment Hotel contains 55 individual apartments whose rents range from approximately \$45.00 to \$57.50. The fair market value of these five apartment buildings is approximately \$1,200,000.00.

A brief summary of the Receiver's education and previous business experience is as follows:

He was graduated from Northwestern University in 1927 with the degree of Bachelor of Science in

(Testimony of Jefferson A. Mann.)

Commerce. During the year 1931 he managed from 40 to 50 buildings of different types ranging from residences up to large apartment buildings, the largest being an apartment hotel containing 60 apartments, in connection with the administration of a receivership in Chicago, Illinois.

He was later employed for a number of years by the Garrett Company in New York, who are grape growers and vintners, their principal office being located in New York, N. Y. During the last three or four years of his employment with this concern, which ended on or about January 1, 1948, he occupied the post of Eastern Sales Manager and received a net compensation of \$40,000.00 per year.

Shortly after January 1, 1948, he came to southern California where he has resided continuously until the present date. While living in southern California he has owned and actively engaged in the management of apartment houses and [69] other residential properties located in this area. He has also engaged in various business ventures while residing in southern California.

Mr. Hallberg's tenure of office as Receiver of all the real and personal properties constituting the former Richman Trust continued from on or about December 1, 1953 to and including February 28, 1954. During that period he supervised the management and operation of the five apartment hotels previously mentioned.

Each of these apartment hotels had a resident

(Testimony of Jefferson A. Mann.)

manager operating under the Receiver's direction. These managers received their compensation from the receivership assets. The Receiver also employed a full time bookkeeper in connection with the operations of the former Richman Trust, who was paid a monthly salary from the former trust assets.

The Receiver was also assisted by his wife, Mrs. Hallberg, who collected the rents from each of the five apartment buildings at least three times a week and deposited them in the Receiver's bank account. Her duties also included supervising the renovation and decorating of the individual apartments. Mrs. Hallberg received no compensation from the estate. She is a graduate of the University of Minnesota, and in the early 1940's was one of two women investment counselors in New York, N. Y. She also holds a real estate broker's license in California. [70]

Throughout the three-month period of the receivership, the Receiver was responsible for the employment and discharge of receivership personnel. In this regard, in February, 1954, he discharged the bookkeeper first employed by him and hired a new bookkeeper. He was likewise charged with the duty of planning the accumulation of monies from receivership properties to meet substantial current obligations such as taxes and insurance premiums.

During the course of his term of office as Receiver, he reviewed all types of insurance carried on the five apartment buildings above mentioned. In this connection he negotiated some new insur-

(Testimony of Jefferson A. Mann.)

ance coverage, thereby obtaining for the trust a discount of 10 per cent on the standard rate of the fire insurance policy covering the Oliver Cromwell, plus a 20 per cent-25 per cent dividend at the expiration of this policy.

From time to time he inspected the various apartment buildings, paying particular attention to the boilers, refrigeration systems, water heaters, basements, etc. In this connection he supervised a major repair of the refrigeration equipment in the Western Arms, and selected a new concern to supply refrigeration service at this apartment hotel. He also made decisions respecting the proper method of upkeep and/or replacement of plumbing at the Fountain Manor.

He supervised the establishment of a new accounting system for the above mentioned apartment buildings, and [71] instructed the bookkeeper in the proper method of maintaining this system of accounts. During the course of the receivership, he frequently actively assisted in the bookkeeping duties.

On one occasion he petitioned this court for authority to pay Christmas bonuses to employees of the former Richman Trust, which said petition was granted. On another occasion he petitioned this court for authority to renovate individual apartments and testified personally in connection with the hearing thereon. This petition for authority to renovate was also granted on or about January 15, 1954, following which the Receiver carried out a

(Testimony of Jefferson A. Mann.)

limited program of renovating individual apartments.

In order to determine whether the rentals being charged at the various apartment buildings were adequate, he surveyed the areas in the neighborhood of the Western Arms, Oliver Cromwell, and Fountain Manor to determine the comparative rents being charged in nearby apartment buildings.

In order properly to prepare a fiduciary income tax return covering the former trust properties, he conferred with employees of the Director of Internal Revenue regarding the tax status of the former Richman Trust, and assisted the bookkeeper in preparing such return.

During the three-month period of the receivership, the gross income from the receivership assets was approximately [72] \$95,000.00.

On the basis of these facts, do you have an opinion, Mr. Mann, as to the reasonable value of the Receiver's services in connection with his administration of the business and affairs of the former Richman Trust? A. I do.

Q. What is your opinion?

Mr. Enright: Pardon me just a minute, please. To which objection is made, first, upon the ground the subject matter is not one of expert opinion.

Secondly, upon the ground that the witness testified to no experience as to apartment house management, he having testified, in stating his qualifications, that he had obtained management property.

(Testimony of Jefferson A. Mann.)

He has testified to no experience of his own, to the management of similar properties.

Thirdly, the hypothetical question misstates much of the evidence as of this time.

The Court: The hypothetical question, I think, is properly phrased. Of course, there might be different facts put in a different hypothesis, or some of the facts herein stated left out, but that would be for your hypothetical question, Mr. Enright.

The witness, I don't think, has stated sufficient familiarity with the compensation usually paid for services of this particular character. He has told us he was with [73] Rowan & Co., that Rowan & Co. handle a highly diversified type of property, and we know, from just acquaintance in the community, that they handle properties of the character that are involved here.

But whether this witness has any knowledge of what fees are charged for the handling of properties of the type named here, when they are handled by Rowan & Co. or by others, I don't think we have been told.

I think you had better lay a little further foundation in that respect.

Now, as to the objection to this as being not a subject for expert testimony, we are confronted with the problem that an officer of the court, acting as a Receiver, acts on a different basis than a person seeking employment in a competitive field.

Some of the cases say that being, in effect, in the public service, he must expect to not be compen-

(Testimony of Jefferson A. Mann.)

sated as fully as if he were in private service. However, what is paid in private service is one of the things to be considered by the court in determining what the compensation should be.

So the objection is provisionally sustained, that is, it is sustained only as to the inadequacy of foundation.

Mr. Enright: May I take the witness on voir dire, as to his qualifications on the particular subject matter?

The Court: Yes. Let's have Mr. Whyte bring out what he [74] wishes to, and you can cross examine on that particular phase before he answers the question.

Q. (By Mr. Whyte): Mr. Mann, what familiarity, if any, do you have with the compensation paid in this area for property management, particularly with reference to apartment hotels?

Mr. Enright: Objection is made upon the ground his familiarity does not qualify him to express an opinion. His experience in the field might be a proper question.

The Court: Overruled.

The Witness: I have on many occasions obtained the rental—the management schedules in force on various properties, not only those handled by Rowan & Co., but I have been in many properties of which I have been requested and hired for compensation to appraise.

In the course of appraisement it was necessary to determine, in many instances, the compensation

(Testimony of Jefferson A. Mann.)

paid for the management of similar types of property.

I recently was personally responsible for bringing in to Rowan & Co., and negotiated contracts for the management of property of an income residential character, not as large an apartment, but a smaller apartment.

In my sales experience it was necessary to determine the net incomes of apartments, and in the course of determining those sources of net income it was necessary to have [75] all of the facts of what was paid to managers, to operators, to resident operators of apartment houses of this character.

Q. (By Mr. Whyte): Do you know whether or not the Los Angeles Realty Board has a schedule of management fees for property of this type?

A. They have.

Q. Are you familiar with those schedules?

A. I am.

Q. Do you have with you the most recent schedule issued by the Los Angeles Realty Board?

A. I have.

Q. With regard to management fees for apartment buildings? A. I have.

Q. Directing your attention to the handbook which you have handed me, headed "Los Angeles Realty Board Handbook, Roster of Members, Code of Ethics, Schedule of Commissions", with the address of the Board at the bottom of the title sheet,

(Testimony of Jefferson A. Mann.)

can you tell me approximately when that handbook was issued? A. December 1, 1952.

Q. And are you able to state whether or not that is the latest handbook put out by the Los Angeles Realty Board covering those subjects?

A. To the best of my knowledge it is their last book. [76] I am a member of the Realty Board and am advised of these things, but this is the last schedule I have received.

Q. Will you turn to the page in that handbook which deals with the commissions for property management of such buildings as apartment hotels.

A. (Witness complies) The schedule as set forth for management of property fees for business properties, including hotel apartment houses and bungalow court buildings appears on page 13.

Mr. Whyte: I submit that a sufficient foundation has been laid now for the hypothetical question I put to this expert witness.

The Court: All right. Mr. Enright wants to question him before he answers.

You may do so.

Voir Dire Examination

Q. (By Mr. Enright): Is there any uniformity, Mr. Mann, in the nature of the services rendered by the property managers?

A. It varies according to circumstances.

Q. Some managers would furnish complete accounting monthly, is that correct, and other managers would not? A. That is correct.

(Testimony of Jefferson A. Mann.)

Q. And some managers would furnish complete bookkeeping records and others would not? [77]

A. Well, they all furnish bookkeeping records. They are all charged with producing monthly reports on all management property. That is part of the duties of a manager.

Q. And the manager pays for that service himself, the personnel in performing that service, in making the monthly report?

A. Not necessarily, no.

Q. Well, is there any uniformity at all as to who pays for that?

A. No, sir, there is not. It depends on the negotiated contract.

Q. You personally, I assume, have not acted as a property manager yourself at any time?

A. No, sir, I personally have not been charged with the operation of apartment houses. I was a Receiver in which there were two apartment houses in the receivership. It was one of my duties to know all of the facts and conditions surrounding that receivership.

Q. That was that particular case involving that particular two apartment houses and the activities of the persons interested in the apartment houses, isn't that right?

A. That was the one time I was directly in charge of the records and the conditions surrounding those apartments.

Q. You are familiar with the persons whose

(Testimony of Jefferson A. Mann.)

business is that of managing of property, apartment house property, [78] known as certificated property managers?

A. No, I do not know that concern.

Q. Certified property managers?

A. No, I do not know that concern, sir.

Q. Well, there is a board or a group of persons who carry on that business in Los Angeles and various parts of the United States that are certified as being qualified property managers? Are you familiar with that fact?

A. I am familiar with the Los Angeles Apartment House Managers Association, of which Mr. David Culver, a close personal business associate, was formerly the president. Mr. Sid Beach, I believe, is the president at the present time. That is the association I know of here.

I don't think I answered your question fully. I don't know the concern that you mentioned.

Q. Now, are you familiar at all with whether or not there is any uniformity of the services that are rendered by the apartment house property managers?

A. To a degree, there is a uniform service rendered. It is modified, depending on the particular circumstances.

Fundamentally, the services rendered are uniform to this degree: It is the duty of the manager to collect rents. It is the duty of the manager to maintain and make recommendations to an owner or under different circumstances to be the entire

(Testimony of Jefferson A. Mann.)

head of decision for what should be done on the [79] management of that property.

It is the province of a manager to see the bills are paid. Those are all uniform. It is proper function of a manager on a uniform basis to see that the apartments are maintained in proper condition, that they must—that the functions of the building must go on, such as refrigeration, elevator service, janitor service, if any, heating and those types of functions.

Those are more or less standard. It comes into a separate entity and an additional function when the manager is required to possibly handle the financial end. I mean by that renegotiation of contracts, renegotiation of loans, making major decisions as to alterations, and the function of preparing tax returns and other entities that become an additional function over the standard operations.

Q. Now, this realty board document you have before you, sir, on page 13, refers only to fees for managing apartment houses, and it specifies a particular percentage, doesn't it?

A. It does, sir.

Q. Now, that percentage specified there covers the service of the property manager in collecting the rents, doesn't it? A. Yes.

Q. And he bears the expense of collecting those rents? [80] A. That is correct.

Q. He bears the expense of preparing a monthly report or accounting of his management?

A. Yes.

(Testimony of Jefferson A. Mann.)

Q. And he bears the expense of negotiating the contracts for the painting or the decorating of the apartments?

A. Not necessarily, Mr. Enright.

Q. Then will you explain, sir, what is the amount specified there, 5 percent for the property manager?

A. The minimum charge of 5 percent of the monthly rents collected, where the collections do not exceed \$2,000.00 per month. Part B, "When the monthly rentals from the single tenants or the average monthly rentals from two or more tenants in the same building is over \$2,000.00, the charge shall be 3 percent."

Q. There is nothing in the book there that states what service will be rendered, though, for that 3 percent or that 5 percent, is there?

A. That is correct, sir.

Q. Have you any knowledge of any rule or regulation setting up these standards of ethics, as to what service will be rendered?

A. I have negotiated, as I said before, contracts between property owners and management associates, such as Rowan & Co. I have made many studies of those contracts in [81] the course of appraising various properties.

I have discussed the matter with management companies, other than Rowan & Co., as, for example, Benton Management Company and associates of that kind, to determine what is customary in a management contract.

(Testimony of Jefferson A. Mann.)

Q. Is it your opinion that the 3 percent for collections in excess of \$2,000.00 a month is reasonable or the going rate?

Mr. Whyte: Well, now, I submit that is going beyond voir dire. The voir dire was supposed to have been—

The Court: It is, yes.

Mr. Enright: Then I renew my objection.

The Court: May I ask a question? Are different rates charged for short term than for long term management, as, for instance, in this case that the court is now considering, we have an exact four month term.

Would there be a different rate within the calling for a short term, such as four months, than there would be for an annual or bi-annual contract, something of that kind?

The Witness: There would be, your Honor, for the definite reason that the cost of setting up the operation to handle properties such as we are talking about in this case is rather heavy. They have to assign men, they have to set up their bookkeeping system, they have to enter all their records, which is quite an elaborate thing to accomplish. [82]

Very few concerns would be very much interested in short terms unless the compensation was commensurate with a short term rather than a long term operation, because they would have to recover their additional expenses out of those fees.

The Court: Those questions of the court were not voir dire on the immediate matter, anyway. But

(Testimony of Jefferson A. Mann.)

they were something I thought if I didn't ask that I might forget. I would rather like to know the practice in the vocation in regard to this.

Now, proceed to your questioning.

Mr. Whyte: I renew the long hypothetical question which I asked before, and submit that the witness' qualifications as an expert have been laid sufficiently so he ought to be able to express his opinion as to the reasonable value of the Receiver's services in connection with his administration of the business and affairs of the former Richman Trust.

The Court: Do you have that question in mind?

The Witness: I do, your Honor.

The Court: You have a copy before you?

The Witness: Yes.

The Court: You had seen it before you came here today?

The Witness: I did, sir.

The Court: You may answer.

The Witness: In my opinion, the reasonable value of the Receiver's services in connection with his administration of the business and affairs of the former Richman Trust, in [83] my opinion is 5 percent.

The Court: Of what?

The Witness: Of the gross income from the properties during the period of his tenure.

Mr. Whyte: You may cross examine.